

# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

No. 79.

JUAN MARTINEZ, ADMINISTRATOR OF FRANCISCO  
MARTINEZ, DECEASED, APPELLANT

THE INTERNATIONAL BANKING CORPORATION

No. 80.

JUAN MARTINEZ, ADMINISTRATOR OF FRANCISCO  
MARTINEZ, DECEASED, APPELLANT

THE INTERNATIONAL BANKING CORPORATION

THE UNITED STATES OF AMERICA

THE UNITED STATES OF AMERICA

THE UNITED STATES OF AMERICA



(21,370 and 21,371.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 266.

MARIANO MARTINEZ, ADMINISTRATOR OF FRANCISCO  
MARTINEZ, DECEASED, APPELLANT,

vs.

THE INTERNATIONAL BANKING CORPORATION.

No. 267.

MARIANO MARTINEZ, ADMINISTRATOR OF FRANCISCO  
MARTINEZ, DECEASED, APPELLANT,

vs.

THE INTERNATIONAL BANKING CORPORATION.

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THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the transcript of the record in the two cases of the International Banking Corporation vs. Francisco Martinez, R. G. Nos. 3471 and 3472, consists of five pieces, as follows:

1. Proceedings in trial and appellate courts in case No. 3471, 82 pages;
2. Proceedings in trial and appellate courts in case No. 3472, 107 pages;
3. Testimony applicable to both cases, 380 pages;
4. Translation of Exhibits in both cases, 332 pages;
5. Original Exhibits in both cases in Spanish;

and that the same comprise a true, full and correct transcript of the said two cases.

In Witness Whereof, I hereunto set my hand and affix the seal of the said Supreme Court in Manila, Philippine Islands, this ninth day of June, A. D. 1908.

[Corte Suprema, Islas Filipinas.]

J. E. BLANCO,

*Clerk of the Supreme Court of the Philippine Islands.*

(1.)

Original.

RECORD No. 3471.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

In Equity.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Submitted January 21, 1908; Decided February 29, 1908.

Be it remembered, That the following proceedings were had in the Court of First Instance of Manila, and in the Supreme Court of the Philippine Islands in the above entitled cause:



UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

Action to Foreclose Mortgage on Personal Property.

*Complaint.*

The International Banking Corporation, a corporation duly created under the laws of the State of Connecticut, in the United States, and doing business in said City of Manila, complains against Francisco Martinez and Charles C. Cohn as guardian of said Francisco Martinez, both residents of said City of Manila, and says:

I. That on May 2, 1903, said Francisco Martinez and Pedro Martinez, his son, were the owners of two steamers duly registered in the Custom House of the Philippine Islands, each owning one half undivided interest therein, said steamers being known respectively as the "Don Francisco" and the "Germana."

II. That on said May 2, 1903, the plaintiff loaned to said Francisco Martinez the sum of Thirty Thousand Pesos (P30,000), local currency, on the condition that the same should be repaid on the second day of August, 1903, together with interest at the rate of eight (8) per cent. per annum and on the further condition that in case such payment should not be made, then the said Francisco Martinez would pay all costs and expenses which might be incurred by the plaintiff by reason of such non-payment.

III. That, as security for said loan, the said Francisco Martinez executed and delivered to the plaintiff, on said 2d day of May, 1903, an instrument in writing wherein he mortgaged to the plaintiff his one half undivided interest in and to said two steamers, the "Don Francisco" and the "Germana," a copy of which mortgage is hereto attached and marked Exhibit A, and which it is prayed may be deemed to be a part of this complaint, said steamers being particularly described therein.

IV. On June 9, 1903, shortly after the execution of said mortgage, it was mutually agreed by and between the plaintiff, the said Francisco Martinez, and the said Pedro Martinez that the said Francisco Martinez should become sole owner of the steamer "Germana," releasing to Pedro Martinez the undivided half interest of Francisco Martinez in the steamer "Don Francisco," and that the plaintiff should release the lien of its said mortgage as against the undivided half interest in said steamer "Don Francisco," and in consideration thereof acquired a lien upon the entire steamer "Germana"; and said agreement was duly signed by the three parties and approved by the Court of First Instance of Manila on June 15, 1903, there being at

that time pending therein a suit for partition between said Francisco Martinez and Pedro Martinez.

V. No part of said loan of Thirty Thousand Pesos (P30,000), local currency, has ever been paid to the plaintiff, nor any interest thereon, although the same is long past due and frequent demand has been made upon said Francisco Martinez for such payment.

VI. On the 19th day of November, 1903, the Court of First Instance of Manila appointed a guardian for the said Francisco Martinez, and named as such guardian Charles C. Cohn, who has taken possession of certain other properties belonging to said Francisco Martinez, and for these reasons the said Charles C. Cohn, in his capacity as such guardian, is made a party defendant in this proceeding; said steamer, however, being in the possession of the plaintiff.

The plaintiff therefore prays that this Court render a judgment in favor of the plaintiff, and against the defendants, in the sum of Thirty Thousand Pesos (P30,000), local currency, or its equivalent in Philippine Currency, together with interest at eight (8) per cent. from May 2, 1903, to date of judgment, cost and expenses, and directing that, in the event of non-payment, the said steamer "Germana" be sold by the Sheriff of Manila at public auction, and that the net proceeds of such sale be first applied to the payment of the claim of the plaintiff, and that the surplus, if any, be held subject to the future orders of this Court, and, in case the net proceeds of such sale be insufficient to pay the claim of the plaintiff, that the latter have the right to proceed against any other property of said Francisco Martinez in order to collect such deficit, and for such other remedy and relief on the premises as the case may require and to the Court may seem just.

PILLSBURY & SUTRO,  
*Attorneys for Plaintiff.*

Presented and filed Feb. 25, 1905.

#### EXHIBIT "A."

##### Steamers Don Francisco and Germana.

To all to whom these presents shall come, Be it known that I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at No. 62 Lavazeres, of age, married a third time, a merchant by occupation, in consideration of the sum of 9,000 pesos, local currency *by* me paid by the International Banking Corporation, through its agent Robert Wemyss Brown of this city, of age, married and a merchant, do hereby pledge to the said Banking Corporation as security for the said loan a one-half interest in the steamers "Don Francisco" and "Germana," of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my deceased wife Germana Ilustre, which steamers are described as follows:

Steamer "Don Francisco," provided with high and low pressure engines of twenty-five horse power, brigantine rigged. This steamer

was built in Hong Kong in the year 1893 for Messrs. Goo Jemorek Comp. L., ship builders at that port, it having a copper sheathed wooden hull. The said Messrs. Goo Jemorek Comp L. sold the said ship to George Armstrong, and English subject, a merchant of Manila and at present residing at the said port of Hong Kong for the agreed sum of 19,000 pesos, and it was sold by the said George Armstrong to Don Francisco Martinez of Balayan, province of Batangas for the same price, 19,000 pesos, as appears from the instrument executed before the Spanish Consul at the said Port of Hong Kong, and from the instrument numbered 263, whereby Don Francisco Martinez y Garcia accepted the sale of the said ship before the notary public of this City, Calixto Reyes y Cruz on the twentieth of June, 1893.

Its dimensions are as follows: length thirty-one meters and thirteen centimeters; beam five meters and fifty centimeters; and depth two meters and nineteen centimeters, with a tonnage of one hundred and five and twenty-six hundredths tons as per certificate issued on the twentieth of May, 1893, by the ship gauger of this port, Luis Ruis y Moreno. This steamer was appraised by the Harbor Master and mechanical expert on the 18th of May, 1893, it being found that its wooden hull was copper sheathed. It has an actual value of thirteen thousand pesos, its rigging a value of five hundred pesos; its sails and tackle being of the value of fifteen hundred pesos; making a total of fifteen thousand two hundred pesos. The boiler, engines and tank of the said ship are of the value of five thousand eight hundred pesos. And under section 5 title 9 of the ordinances of 1802 it is provisionally recorded in this entry pursuant to the order of the naval commander of the second instant.

Manila, April 12th, 1898.

(Signed)

ARTURO MARCUO.

Screw steamer "Germana," with high and low pressure engines, thirty-two nominal horsepower, schooner rigged. This steamer was built in the neighboring port of Hong Kong in the year 1897. It belongs to William George Winterburn, a resident of that port, engineer and ship builder, who sold the same to Francisco Martinez y Garcia, a resident of Balayan, province of Batangas for the stipulated sum of fifty-six thousand pesos, as appears from a certain document of sale executed on the third of May, 1897, before the notary public of this city, Agustin Malfas y Mera. This ship was measured by the Acting Official Ship Gauger, Manuel de la Vega, a marine lieutenant, as shown by a certificate issued May tenth, 1897, its dimensions being as follows: length, thirty-two meters and sixty-nine centimeters; beam, five meters and forty-five centimeters; and depth, two meters and twenty-nine centimeters, the total tonnage being one hundred and thirty-six and thirty-nine one-hundredths tons and the net tonnage being eighty-eight and seventy-eight one-hundredths tons. It was appraised by the Harbor Master and iron ship inspector of this port as shown by a certificate dated May 7th, 1897, from which it appears that its copper sheathed wooden hull is worth 14,000 pesos; its masts and rigging 500 pesos; sails and tackle 1100 pesos; and two boats in good condition, two hundred and fifty pesos; making a total of fifteen thou-

sand eight hundred and fifty pesos. Its high and low pressure engines, with condensers, of thirty-two nominal horsepower and donkey engine, pipes and auxiliary apparatus having been valued at 10,200 pesos, making a total of 26,050 pesos. And in compliance with the order of the naval commander of the 12th instant, and in accordance with the provisions of section five, title nine of the ordinances of 1802, it is provisionally recorded in this entry until the proceedings relating to the registration are approved by higher authority.

Manila, April 15th, 1898.

(Signed)

ARTURO MARENCO.

I further make known that the loan to secure which I have pledged the aforesaid two steamers is subject to the condition that the said thirty thousand pesos received shall be returned by me in local currency, with interest at the rate of eight per cent. per annum and that I shall defray any expenses which may be incurred by my failure to discharge the said obligation, on the second day of August of the present year.

I further make known that until the said obligation is fully discharged, Benito Robles will take charge of the said steamer and shall hold the same as depositary for the benefit of the Bank as pledgee.

And, whereas, Mr. Robert Wemyss Brown has agreed to the foregoing in his capacity as agent of the Bank, as appears from the power of attorney conferred upon him and duly recorded on

the sixth of June of last year in the Mercantile Register of this City at page three hundred and sixty-six, second inscription of the partnership books, he, the said Robert Wemyss Brown hereby accepts all of the covenants and agreements contained in this instrument.

Likewise Benito Robles, of this city, residing in the District of San Nicolas, interior, of age, hereby accepts his appointment as depositary of the said steamers, which office he promises to perform truly and faithfully, and to at all times hold the steamers at the disposal of the Bank, until this obligation is fully discharged.

In virtue whereof, the contracting parties and the depositary after having carefully read this instrument sign and ratify the same in the presence of the witnesses Jose Gervacio Garica and Gregorio Ramoa, this second day of May, 1903.

FRANCISCO MARTINEZ.  
JOSE GERVACIO GARCIA.  
BENITO ROBLES.  
R. W. BROWN.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*City of Manila, Philippine Islands:*

In the municipality of Manila, province of Manila, this second day of May, 1903, personally appeared before me Francisco Martinez, Robert Wemyss Brown and Benito Robles, personally known to me

to be the persons who executed the foregoing instrument, and acknowledged the same to be their own free act and deed.

FRANCISCO MARTINEZ.  
R. W. BROWN.  
BENITO ROBLES.

Before me:

EDUARDO GUTIERREZ REPIDE.  
[NOTARY'S SEAL.] *Notary Public.*

My Commission expires January 1st, 1905.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

9 UNITED STATES OF AMERICA.  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ et al., Defendants.

Now come the defendants in the above entitled cause and demur to the complaint filed by the plaintiff in this action, for the following reasons, to-wit:

1. That there is a confusion of parties defendant, in this, that the defendants named in this cause are Francisco Martinez and Charles C. Cohn, as guardian of the person and property of said Francisco Martinez, and it is impossible to unite in one cause of action two persons, one of whom is the guardian of the person and property of the other.

Wherefore the defendants pray that they may be acquitted of the complaint, with the costs in their favor.

Manila, March 21, 1905.

(Signed)

COUDERT BROTHERS,  
JOHN W. HAUSERMANN,  
CHARLES C. COHN,  
DANIEL R. WILLIAMS,  
*Attorneys for Defendants.*

Received copy today, March 21, 1905.

(Signed) ARTHUR F. ODLIN, FOR  
PILLSBURY & SUTRO,  
*Attorneys for Plaintiff.*

Filed on the 22 of March, 1905, 8.20 A. M.

J. McMICKING, *Clerk.*

10 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of Manila.

Civil. No. 3363.

THE INTERNATIONAL BANKING CORPORATION

vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of F.  
Martinez.

Part III.

The defendant Francisco Martinez comes now and demurs to the complaint for the following reasons:

I. That the complaint is defective, or that there exists in it a confusion of parties.

II. That the facts alleged in the complaint do not constitute a cause of action.

Wherefore he prays the court to sustain this demurrer and to acquit him of the complaint.

Manila, March 30, 1905.

(Signed)

FRANCISCO MARTINEZ.

Received copy March 30, 1905.

(Signed)

PILLSBURY & SUTRO,  
*Attorneys for Plaintiff.*

Filed March 30, 1905.

— — — — —, *Clerk.*

11 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila.

No. 3363.

THE INTERNATIONAL BANKING CORPORATION

vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez.

Part III.

After an examination of the demurrers of the defendants, Francisco Martinez and Charles C. Cohn as guardian of the same, to the complaint, and not believing the same well-founded.

The said demurrers are dismissed and each of the defendants is granted five days in which to answer.

Manila, April 13, 1905.

(Signed)

MANUEL ARAULLO, *Judge.*

Copy of the foregoing resolution sent to-day April 13, 1905, to the attorney for the plaintiff, for his information, who will give notice of the same to the other party.

R. MORENO,  
Assistant Clerk, Court of First Instance,  
Manila, P. I.

12 UNITED STATES OF AMERICA,  
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 3363.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

Action to Foreclose Mortgage on Personal Property.

*Answer and Cross-Complaint.*

Now comes the defendants in the above entitled action, and defending the alleged cause of action in the complaint of plaintiff, set forth allege:

### I.

That defendants deny each and every, all and singular the allegations contained in said complaint of plaintiff and the whole thereof. And as a further, separate and distinct defense to said alleged cause of action, defendants allege:

That on the 19th day of November, 1903, the Court of First Instance of the City of Manila, by its order duly given and made, duly declared the defendant, Francisco Martinez a prodigal and incompetent, and named as guardian for said defendant Francisco Martinez, his codefendant herein, Charles C. Cohn.

### II.

That thereafter, to wit: on the 3rd day of February, 1904, in an action there pending wherein the defendant, Francisco Martinez, is plaintiff and the Honorable John C. Sweeney as Judge of the  
13 Court of First Instance of the City of Manila, is defendant, the Supreme Court of the Philippine Islands duly gave and made its order:

"requiring the defendant Judge to abstain during the pendency of this action or until further order of the Court from making an order or judgment of any kind authorizing the sale, disposal or encumbrance of the properties of plaintiff Don Francisco Martinez, prohibiting at the same time the officials of said Court of First Instance, including Mr. Charles C. Cohn, the guardian appointed by the Court, during the time above mentioned from selling, disposing of, or in

any manner encumbering the properties of the plaintiff Don Francisco Martinez."

### III.

That said order of the Supreme Court of the Philippine Islands, above set forth, has not been revoked or repealed, and the same continues in full force and effect.

And for a further, separate and distinct answer and cross-complaint to said alleged cause of action of plaintiff, defendants allege:

### I.

That by an order of the Court of First Instance of the City of Manila duly given and made on the 19th day of November, 1903, the defendant Francisco Martinez, has been declared and adjudged a prodigal and an incompetent, and your defendant Charles C. Cohn is now, and ever since said last named date has been, the duly appointed qualified and acting guardian of his co-defendant, the said Francisco Martinez, and by the further order of said Court duly given and made on the 18th day of December, 1903, said defendant Charles C. Cohn has been duly authorized and empowered to administer the properties hereinafter mentioned and described.

### II.

That on the 31st day of July, 1896, and for many years prior thereto, the defendant, Francisco Martinez, was the duly wedded husband of Doña Germana Ilustre, now deceased.

### III.

That on said 31st day of July, 1896, and for many years prior thereto, said defendant, Francisco Martinez, and his spouse Doña Germana Ilustre (now deceased) were the owners of certain conjugal property in the Philippine Islands, including the steam vessels known and designated as the "Don Francisco" and the "Germana".

### IV.

That said Doña Germana Ilustre died intestate on the 31st day of July, 1896, leaving defendant Francisco Martinez as her surviving spouse, and one Pedro Martinez as her sole surviving descendant and heir.

### V.

That on the 2nd day of May, 1903, defendant, Francisco Martinez, was in the possession of said steamers "Don Francisco" and "Germana" under and by virtue of an order of the Court of First Instance of the City of Manila, duly given and made on the 25th day of August, 1901, naming and appointing the said Francisco Martinez as administrator of the said steamers "Don Francisco" and "Germana," together with the other properties constituting the conjugal estate of said Francisco Martinez and the deceased Doña Germana Ilustre.



## VI.

That on said 2nd day of May, 1903, said defendant, Francisco Martinez, together with the plaintiff herein, made and executed a certain alleged agreement in writing, a copy whereof is attached to the complaint of plaintiff herein marked "Exhibit A," to which said writing reference is hereby made and the same is made part of this answer and cross-complaint. That under and by virtue of the terms of said writing, the respective parties thereto unlawfully and illegally stipulated and agreed that the aforesaid steamers "Don Francisco"

and "Germana" be pledged to the plaintiff as security for the payment unto said plaintiff of the sum of \$30,000 Mexican Currency, or such part of said sum as might be due and owing unto said plaintiff of and from the said Francisco Martinez personally.

That under and by virtue of the terms of said writing, the respective parties thereto unlawfully and illegally stipulated and agreed that the administration of said steamers "Don Francisco" and "Germana" should be conferred upon and delegated to one Benito Robles, to hold the same at the disposal of the plaintiff, and likewise unlawfully and illegally promised and agreed that said defendant Francisco Martinez should abstain from administering the said steamers "Don Francisco" and "Germana."

## VII.

That thereafter, to wit: on or about the 15th day of June, 1903, a certain writing was executed by and between defendant Francisco Martinez and the plaintiff, wherein and whereby the respective parties agreed to cancel and annul the alleged encumbrance theretofore attempted to be imposed upon the said steamers "Don Francisco" and "Germana" and unlawfully and illegally agreed to transfer absolutely unto the said plaintiff all right, title and interest in and to the steamer "Germana" subject only to the right of redemption (pacto de retro) in favor of said defendant, Francisco Martinez.

## VIII.

That thereafter, to wit: on or about the 30th day of June, 1903, said defendant, Francisco Martinez made and signed together with the International Banking Corporation, plaintiff herein, a certain writing purporting to transfer and assign unto said plaintiff all right, title and interest in and to the said steamer "Germana," subject only to the right of redemption in favor of said defendant, Francisco Martinez.

## IX.

That said defendant, Francisco Martinez, has not received, nor has the plaintiff paid, consideration whatsoever of any nature or kind, for the alleged agreement to transfer, nor for the alleged transfer of said steamer "Germana," nor for either, or any of them.

## X.

That the above mentioned writings made and signed by said defendant, Francisco Martinez, were so made and signed by the latter, and were accepted by said plaintiff for the alleged purpose of securing and guaranteeing unto the said plaintiff the payment of an alleged personal debt of said Francisco Martinez unto said plaintiff. That said Francisco Martinez is not indebted unto said plaintiff in any sum or sums whatsoever. That the said alleged indebtedness of said defendant, Francisco Martinez, consists of a fictitious account of moneys alleged to have been paid and expended by plaintiff for and on account of defendant, Francisco Martinez, in the acquisition and satisfaction of certain alleged promissory notes of said defendant, Francisco Martinez. That said alleged promissory notes of said defendant, Francisco Martinez, were and are wholly null and void as plaintiff then and there well knew, and the moneys paid in the acquisition or satisfaction of the same or any of them, if any, were so paid without the knowledge or consent of said defendant, Francisco Martinez.

## XI.

That during all of the times hereinabove mentioned the defendant, Francisco Martinez, has had, and now has, insufficient mental capacity to permit him to administer his business affairs, or to duly comprehend the significance, object or effect of the writings hereinabove mentioned and referred to. That by reason of said lack of mental capacity the said Francisco Martinez has been during all of said time, unduly susceptible to undue influence, artifice and circumvention of the agents and representatives of the plaintiff. That in the making and signing of said alleged contracts above mentioned, and the whole thereof, the said defendant, Francisco Martinez, has not exercised a deliberate judgment but has been dominated and controlled therein by the superior capacity and the undue influence of the agents and representatives of said plaintiff.

## XII.

That heretofore, to wit: on or about the 30th day of November, 1903, the plaintiff, unlawfully and illegally availing itself of the alleged transfers and assignments of said steamer "Germana" and unlawfully and illegally claiming to be the owner of said steamer "Germana," has taken possession of said steamer and has continued to retain the possession thereof to the present time, appropriating to its own use and benefit the income and earnings produced by the said steamer "Germana."

Wherefore, defendants pray that the judgment of this Honorable Court may issue ordering, adjudging and decreeing:

1. That plaintiff take nothing by this *his* said action against the defendants.
2. That the plaintiff has no right, title or interest in or to the said steamer "Germana."

3. That the alleged transfers and encumbrances of said steamer "Germana" in favor of plaintiff be cancelled and annulled.

4. That the plaintiff render unto defendants a full, true and correct account of all moneys had and received for and on account of the administration and operation of said steamer "Germana" and pay the same unto defendants.

18 5. That plaintiff pay unto defendants the costs of suit incurred by the latter.

6. And such other and further relief as may be meet and proper in law and in equity.

COUDERT BROTHERS,  
JOHN U. HAUSSELMANN,  
CHARLES C. COHN,  
D. R. WILLIAMS,  
*Attorneys for Defendants.*

Copy received this 24th of May, 1905.

PILLSBURY SUTRO.

Presented and filed May 24, 1905.

19 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3363.

"THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, the last-named as  
Guardian of the said Francisco Martinez, Defendants.

*Demurrer to the Cross Complaint.*

Now comes the plaintiff company in the above entitled cause, and demurs to the cross complaint presented therein, and states:

That the facts set forth in said cross complaint do not constitute a cause of action.

That this demurrer refers more particularly to paragraphs 6, 7 and 10 of said cross complaint, and the plaintiff company prays that the said paragraphs be stricken from the same.

Manila, P. I., June 10, 1905.

(Signed)

ARTHUR F. ODLIN,  
PILLSBURY & SUTRO,  
*Attorneys for the Plaintiff.*

Received copy to-day, June 10, 1905.

(Signed) COUDERT BROTHERS,  
*Attorneys for Defendants.*

20 THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Case No. 3363.

THE INTERNATIONAL BANKING CORPORATION  
versus

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez.

This case is on for hearing on demurrer by plaintiff to paragraphs 6, 7, and 10 of the defendant's cross-complaint and the Court is of the opinion that, taking the entire cross-complaint together, it is sufficient in law. It is, therefore

Ordered by the Court that the demurrer be overruled and the plaintiff is allowed five days to answer.

Dated, Manila, P. I., August 22, 1905.

(S'g'd) JOHN C. SWEENEY, *Judge.*

To-day Aug. 22, 1905, notice of the foregoing decision was sent to the parties by registered mail.

(S'g'd) R. HERAS,  
*Assistant Clerk of the Court of  
First Instance, Manila, P. I.*

21 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila, Part III.

Civil Cause 3363.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian,  
Defendants.

The plaintiff, by its attorneys, having been notified to-day of the order of the Court signed August 22, 1905, overruling the demurrer presented by the plaintiff to the cross complaint of the defendants, respectfully excepts to said order.

Manila, P. I., August 25, 1905.

(Signed) PILLSBURY & SUTRO,  
*Attorneys for the International Banking Corporation.*

Received copy to-day, August 25, 1905.

(Signed) COUDERT BROTHERS,  
*Attorneys for Defendants.*

22 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3363.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

*Answer to Cross-complaint.*

Now comes the plaintiff, the International Banking Corporation, by its undersigned attorneys, and for answer to the cross-complaint herein filed on the part of the defendants, says:

I.

The plaintiff admits the allegations contained in paragraphs 1, 2, 3 and 4 of the said cross-complaint.

II.

The plaintiff denies the allegations contained in paragraphs 5, 6, 7, 9, 10 and 11 of said cross-complaint.

III.

With reference to the allegations contained in paragraph 8 of said cross-complaint, the plaintiff admits that on the 30th of June, 1903, the defendant Francisco Martinez signed and delivered to the plaintiff a certain writing, which writing did not only purport to transfer and assign unto said plaintiff all right, title and interest in and to the steamer "Germana" subject only to the right of redemption in favor of said Francisco Martinez, but that such writing did operate actually to transfer and assign the right, title and interest as aforesaid.

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IV.

With regard to paragraph 12 of the said cross-complaint, the plaintiff admits that it did take possession of said steamer "Germana" and has continued to retain the possession thereof to the present time, but denies that such possession was in any way unlawful; on the contrary, the possession of said steamer was lawfully acquired by the plaintiff from the said defendant Francisco Martinez before the appointment of his guardian, to-wit, the other defendant, Charles C. Cohn, and that such possession was conferred by the said defendant Francisco Martinez upon the said plaintiff, the International Banking Corporation by a contract legal and valid in all respects. The plaintiff admits that it has received certain moneys derived from the operations of said steamer, but denies that it has

appropriated the same; on the contrary the plaintiff alleges that the expenses necessarily incurred in the operation of said steamer have exhausted the income derived from the use thereof, and that the former have been set off against the latter.

Wherefore the plaintiff prays that the defendants take nothing by their cross-complaint, and that judgment be rendered *againt* them in favor of the plaintiff as prayed for in the original complaint filed in this case.

Manila, P. I. August 26, 1905.

PILLSBURY & SUTRO,  
*Attorneys for the International Banking Corporation.*

Copy received this 28th of August, 1905.

CONDERT BROTHERS,  
*Attorneys for Defendant.*

24 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of Manila.

No. 3363.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
versus  
FRANCISCO MARTINEZ and CHARLES C. COHN, Guardian of said  
Francisco Martinez, Substituted by VICENTE ILUSTRE, Defendants.

*Amended Answer and Cross-complaint.*

Come now the defendants in the above entitled action by their attorneys Gibbs, Gale & Carr, and by leave of Court first had and obtained, in order to conform to the proofs adduced, present this their amended answer and cross-complaint, denying each and every allegation contained in plaintiff's complaint not hereinafter specifically admitted.

Par. I.

Further answering said complaint, defendants allege:

That on the 14th day of November, 1903, the Court of First Instance of the City of Manila, Hon. John C. Sweeney presiding in civil case No. 2230, by judgment and order duly entered and made, adjudged and declared the defendant Francisco Martinez a prodigal and incompetent, and on the 19th of the same month appointed Charles C. Cohn as guardian of his person and estate; that thereafter, to-wit: on the 6th day of January, 1906, the said Court of First Instance Hon. A. S. Crossfield presiding, appointed co-defendant Vicente Ilustre as such guardian in substitution of said Charles C. Cohn, resigned.

## Par. II.

During all the times hereinafter mentioned, Robert Wemyss Brown, was the duly appointed, authorized and acting agent, manager and representative of the plaintiff corporation, in which capacity all of his acts hereinafter set forth were performed and during said times Ricardo Regidor and Vicente G. Azaola were the duly employed agents and attorneys of the plaintiff corporation, employed and appointed by said Robert Wemyss Brown, acting as such agent and manager.

## Par. III.

That on or about the 1st day of January, 1903, the said named Robert Wemyss Brown, Ricardo Regidor, Vicente G. Azaola and various other persons in their employ, with full knowledge of the mental incapacity and incompetency of the said Francisco Martinez entered into and formed a conspiracy for the purpose and with the intent and object of cheating and defrauding him of his property as hereinafter set forth.

## Par. IV.

Defendant admits that on the 2nd day of May, 1903, said Francisco Martinez signed and delivered to the plaintiff the alleged agreement in writing, a copy whereof is attached to the complaint of plaintiff herein marked Exhibit "A" to which said writing reference is hereby made and the same is made a part of this answer and cross-complaint. That at the time of signing said alleged agreement of the 2nd day of May, 1903, and during all the times mentioned in this answer and cross-complaint, the said Francisco Martinez was and has been by reason of old age, disease and mental and physical infirmity mentally incapacitated and wholly incompetent to administer his business affairs or to care for himself or to comprehend the significance object and effect of said instrument or of any other  
 26 writings or documents signed by him, and by reason thereof and on account of the facts heretofore and hereinafter set forth the said instrument is not binding upon the said Francisco Martinez or upon his estate, but is null and void.

## Par. V.

That on the 2nd day of February, 1903, the said Francisco Martinez without consideration of any nature was, by fraud, deceit, misrepresentations, threats and duress and on account of his mental incapacity induced and forced by the said Brown, Regidor and Azaola, their agents and employees to sign and deliver to the plaintiff corporation a promissory note for P30,000, said named person falsely representing to said Francisco Martinez that said note was for the purpose of cancelling a note of January 23rd 1903, for the same amount given by the said Martinez to the said plaintiff for the purpose of opening an account current in the Bank of the City of New York. That notwithstanding the giving of said second note of P30,000 the plaintiff corporation fraudulently retained the said note of January 23, 1903, uncanceled, with the intention of collecting the same.

ue of both of said notes. That thereafter on said 2nd day of February, 1903, said Brown, Regidor and Azaola their agents and employees by the said fraudulent means induced and forced the said Martinez to sign and deliver another promissory note of P80,000 for the purpose of increasing his credit in account current including said original alleged credit of P30,000 to the sum of P80,000 without giving said Martinez credit for either of the two notes of P80,000 each heretofore mentioned. That afterwards on the said 2nd day of May, 1903, by the same fraudulent means said Francisco Martinez was induced and forced by the said Brown, Regidor and Azaola to sign said instrument of that date which is the basis of plaintiff's complaint herein to secure the fictitious obligation created by said promissory note of P30,000 of February 2nd, 1903, for the signing of which instrument the said defendant Martinez received no consideration of any character.

#### Par. VI.

That thereafter on the 15th of June, 1903, by the illegal and fraudulent means aforesaid, the said Martinez was by said Brown, Regidor and Azaola induced and forced to and did sign an instrument of that date which is attached to and forms the basis of plaintiff's complaint in case No. 3365 being tried in conjunction herewith. That the alleged obligation of P110,000 mentioned in said last named instrument is made up of said notes of P30,000 and P80,000 dated February 2nd, 1903. That the separate loan of P30,000 mentioned in said instrument of June 15th, 1903, is the same fictitious obligation represented by said promissory note of February 2nd, 1903, and by said instrument of May 2nd, 1903, the basis of the present complaint. That after triplicating said fictitious obligation of P30,000 as aforesaid the plaintiff corporation continued to retain said three promissory notes of Jan. 23, 1903, and Feb. 2, 1903, uncanceled, until about the month of February, 1904, when the same were turned over and delivered by said Brown to his co-conspirator Regidor for keeping pending certain investigations into the frauds perpetrated by said conspirators then being conducted by the Prosecuting Attorney of the City of Manila, it being the intention of said conspirators to fraudulently collect from said Martinez the fictitious obligations represented by the said three promissory notes and to again collect the same fictitious obligation represented by the said instruments of May 2, 1903, and June 15, 1903.

That after the declaration of prodigality and incompetency of said defendant Martinez as hereinbefore set forth, the said Brown and Regidor in pursuance of the said conspiracy to cheat and defraud the said Martinez and for the purpose of procuring a consideration for the execution of said instrument of the 2nd day of May, 1903, and to avoid detection for the fraud perpetrated thereby attempted to falsify the books of said plaintiff corporation by causing to appear therein that the consideration of said instrument was made up of various promissory notes given by the said Francisco Martinez in payment of certain fictitious obligations contracted by the said Martinez in games of chance prohibited



by law in which the said Martinez was cheated and swindled by certain gamblers in whose favor such notes were executed and which promissory notes were in pursuance of said conspiracy to cheat and defraud the said Martinez acquired by the said Brown, Regidor and Azaola, their agents and employees at an insignificant portion of their face value with full knowledge of the circumstances under which they were given and charged up against the said Martinez at their full face value in his account with the said plaintiff corporation.

## VII.

That for the purpose of more clearly showing the conspiracy of the said Brown, Regidor and Azaola and their said agents and employees, and the fraud practiced by them upon the said Martinez, defendants refer to, adopt and make a part of their answer herein all of the allegations set forth in their answer and cross-complaint in said cause No. 3365, being tried in conjunction herewith.

## VIII.

That by reason of the facts hereinbefore set forth, defendants allege that the pretended obligation upon which this suit is based is included in and cancelled by the said instrument of the 15th of June, 1903, the basis of the complaint in said cause No. 3365, 29 in which the claim for said alleged obligation is merged, or in other words that there is another action pending for the same cause.

## IX.

Further answering plaintiff's complaint and by way of counter-claim and cross-complaint, defendants allege:

(a) All of the facts set forth in the foregoing answer to which reference is specially made and which are made a part of this counter-claim and cross-complaint.

(b) That on or about the 24th of November, 1903, and subsequent to the judicial determination of the incompetency of Francisco Martinez as hereinbefore alleged, the plaintiff corporation acting wrongfully and illegally and without right or color of right took possession of the steamer mentioned in plaintiff's complaint and ever since said date has used and administered said steamer and collected the rents and income the plaintiff corporation has appropriated to its own use and benefit and has failed neglected and refused and still fails, neglects and refuses to account to defendants therefor though often requested so to do, by reason of which the plaintiff is indebted to the defendant Vicente Ilustre as guardian in a large amount, the exact sum of which can only be determined by an accounting.

Wherefore defendants pray judgment:

(1.) That plaintiff take nothing by this its action against the defendants;

(2.) That the plaintiff has no right, title or interest in and to the vessel mentioned in its said complaint;

(3.) That the alleged transfer and encumbrance of said vessel

in favor of the plaintiff together with its registration in the custom house be cancelled and annulled and that the said vessel be delivered to defendants.

30 (4.) That the plaintiff render unto defendants an accounting of all moneys had and received by it for and on account of the administration and use of said vessel and pay the same to defendants.

(5.) That plaintiff pay the costs of this suit, and

(6.) For such other and further relief as justice and equity may require.

Manila, March 15th, 1906.

GIBBS, GALE & CARR,  
*Attorneys for Defendant.*

Received copy March 15th, 1906.

ARTHUR F. ODLIN,  
*Att'y for Plaintiff.*

Present- and filed March 15th, 1906.

31 THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Civil Case No. 3363.

THE INTERNATIONAL BANKING CORPORATION  
versus

FRANCISCO MARTINEZ and CHARLES C. COHN, Guardian of said  
Francisco Martinez, Substituted by VICENTE ILUSTRE.

*Judgment.*

This case was tried together with Case No. 3365, it being agreed that the evidence taken on the trial pertinent to either or both cases should be considered by the Court in the respective cases. It appears to the Court that this is a suit by plaintiff to recover of defendant, Vicente Ilustre as guardian of Francisco Martinez, the sum of P30,000 together with interest at the rate of 8% and to foreclose Exhibit "A" of plaintiff's complaint as a mortgage on the steamship "Germana" and it further appears to the Court plaintiff has been in possession of said boat under said contract, Exhibit "A."

The Court is of the opinion that the 30,000 pesos sued for in this case has been paid. However, if the Court is mistaken as to this on the facts, the Court is satisfied that this contract cannot be enforced against Francisco Martinez, or against the defendant, Vicente Ilustre as guardian of said Francisco Martinez, for the reason that Francisco Martinez was, at the time of the execution of said document sued on in this case, an imbecile and incompetent to transact this, or any

other business. The facts set out in the Court's findings in Civil Case No. 3365, and the reasons why the contract in that case cannot be enforced are applicable to this case. The Court, therefore, is of the opinion that the plaintiff is not entitled to recover in this case and it is

Ordered, adjudged and decreed by the Court that the plaintiff's suit be dismissed and that the defendant, Vicente Ilustre, as guardian of Francisco Martinez, recover of the plaintiff, The International Banking Corporation, the costs of this suit, for which it is specially ordered that execution issue.

The proof shows that the plaintiff has expended more money on this boat "Germana" for insurance and repairs by several thousands of dollars than it has realized from said boat "Germana." The Court is not inclined to render judgment against the plaintiff Bank for the amount it realized on said boat, but the Court holds that the plaintiff Bank is not entitled to recover of defendant, Vicente Ilustre, as guardian of Francisco Martinez, the difference between the amount expended and the amount realized. It is, therefore,

Ordered by the Court that the plaintiff, The International Banking Corporation, deliver possession of the steamer "Germana" to the defendant, Vicente Ilustre, as guardian of Francisco Martinez, upon demand.

Dated, Manila, P. I., March 29th, 1906.

JOHN C. SWEENEY, *Judge.*

33 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

Civil Suit No. 3363.

INTER'L BANKING CORPORATION, Plaintiff,

vs.

FRANCISCO MARTINEZ and VICENTE ILUSTRE, Defendants.

*Exception to the Decision.*

Now comes the attorneys for the plaintiff in the above entitled cause, and excepts to the judgement rendered on the 28th of March, 1906, and makes known their intention to present a bill of exceptions.

Manila, March 30, 1906.

(Signed)

KINNEY, ODLIN & LAWRENCE,

*Attorneys for Plaintiff.*

Received copy today, March 30, 1906.

(Signed)

GIBBS, GALE & CARR,

*Attorneys for Defendants.*

34 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3363.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and VICENTE ILUSTRE, as Duly Appoint-  
Guardian, Defendants.

*Motion for a New Trial.*

Now comes the plaintiff in the above entitled case and respectfully prays the Court to set aside the judgment rendered and to grant a new trial, for the following reasons:

1. That the evidence was not sufficient to justify the decision of the court.
  2. That the decision is contrary to the law.
  3. That the findings of fact are plainly and manifestly against the weight of the evidence.
  4. For other errors which appear in the record.
- Manila, P. I., March 31, 1906.

(Signed) KINNEY, ODLIN & LAWRENCE,  
*Attorneys for Plaintiff.*

Received copy this 31st of March, 1906.

(Signed) GIBBS, GALE & CARR,  
*Attorneys for Defendants.*

35 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

Civil Case No. 3363.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.

FRANCISCO MARTINEZ and His Guardian, Defendants.

*Memorandum in Support of Motion by Plaintiff for New Trial.*

Many of the features of this case are discussed by us in the memorandum filed in support of our motion for a new trial in Civil Case No. 3365, it being observed that this case and that case were, by consent, tried together, it being agreed that the evidence taken on the trial pertinent to either or both cases should be considered by the Court in the respective cases. There are, however, a few points

in connection with the judgment of the Court in this case which require explanation separate from the points made by us in relation to the other case.

The judgment of the Court in Civil Case No. 3363 is very brief, and the contention of the plaintiff is that, outside of the errors of law and fact committed by the Court in rendering the said judgment, the motion for a new trial should be granted solely on the ground of the vagueness and uncertainty of the judgment itself.

36 In support of this proposition, we call the attention of the Court to the fact that the first paragraph of the judgment in this case is correct where it is stated that this suit was instituted to recover the sum of P30,000, with interest, and to foreclose a mortgage upon the steamer *Germana*, the plaintiff being in possession of said steamer under the contract; but immediately thereafter the Court goes on to state that it is of the opinion that the P30,000 sued for in this case has been paid. If the Court means to say that this sum has been paid by the defendant to the plaintiff, it is clearly an error because the evidence shows, and the defendants themselves admit, that no money whatever has been paid by the defendant Francisco Martinez, or his guardian, to the plaintiff since the transactions commenced. In every instance money was advanced by the plaintiff to the defendant Martinez. If the Court means to say that this money was paid by the defendant Martinez to the plaintiff, the only possible explanation of this finding is based on the fact that a check for P30,000 on the bank of the plaintiff was drawn by the defendant Martinez. This check, however, forms part of an overdraft which has never been paid and which consists of various items aggregating something like P172,000, all the details of which appear in the evidence as submitted. Therefore, where a debtor of a bank has given a mortgage to said bank, and afterwards draws a check on the same bank against funds which do not exist, the transaction, we contend, can in no sense be regarded as a payment. It may be considered as a change in the form of the obligation, and, under circumstances indicating a surrender of the security, it might operate as a cancellation of the mortgage, but under no conception what-

37 ever could such a transaction be regarded as a payment of the debt. It is therefore clear that if our interpretation, as above set forth, of the meaning of the Court is correct, the plaintiff certainly would be entitled, under the harshest interpretation possible, to a judgment for the P30,000 and interest, without regard to the security, such relief being appropriate under the general prayer for further relief which is to be found at the end of the complaint.

It is quite possible, however, that the Court, when he stated that in his opinion the P30,000 sued for in this case had been paid, meant to say that the debt represented by said sum had been paid by the plaintiff for the defendant. If this was the meaning of the Court, his statement was absolutely correct. The evidence shows, and it is indisputable, that Francisco Martinez had executed a mortgage upon certain real estate in favor of a corporation in Manila known as *El Varadero*, which corporation was engaged in the business of effecting repairs upon steamers, a large amount of work having been

done by said corporation for the said Francisco Martinez. The latter was unable to pay this indebtedness, and arranged with the plaintiff, the International Banking Corporation, to make such payment, which was done, as shown by the evidence. Thereupon El Varadero canceled the mortgage which had been given to it by Francisco Martinez, and the latter executed a mortgage to the bank plaintiff upon the steamer Germana to secure such money. Therefore, in any view of the case, the bank would be entitled to be subrogated to all the rights of action which El Varadero would have had against Francisco Martinez had this transaction not taken place. It is therefore plain that the Court committed a serious error in denying all relief to the plaintiff.

The Court in its decision then goes on to say that this contract can not be enforced against Francisco Martinez for the reason that the latter was, at the time of the execution of the document, an imbecile and incompetent to transact this or any other business. In support of this contention the Court refers to its own findings in the judgment rendered in Case No. 3365, which we have already discussed at length. This discussion we do not desire to repeat at this time, but shall merely ask the present court to consider the arguments submitted in said case, in connection with the present case.

In conclusion, we beg to call the attention of the present Court to another inconsistency. The Court, in its decision in this case—No. 3363—refuses to render judgment against the bank for the amount of money received by it in connection with the management of the said steamer Germana, but simply orders that possession of the steamer be surrendered to the guardian of the defendant; whereas in Case No. 3365 the Court required the plaintiff bank to pay to the defendant all sums of money received by said bank as rent of the real estate in its possession, without allowing any credit for expenses in connection with repairs, taxes, and insurance, in spite of the fact that the steamer and the real estate were both turned over to the bank by the defendant in order that the bank might control said properties until the indebtedness should be paid. It therefore needs no argument to show that *both* these decisions *can not* be correct upon this point.

Therefore, in view of what is here stated, in connection with what has been urged in our memorandum filed in the other case, we respectfully submit that equity and justice require that this motion for a new trial, as well as the motion for a new trial in the other case, be granted; and it is so prayed.

Manila, P. I., April 24, 1906.

(Signed) KINNEY, ODLIN & LAWRENCE,  
*Attorneys for the International Banking Corporation.*

40 THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Case No. 3363.

THE INTERNATIONAL BANKING CORPORATION  
versus  
FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez.

*Order.*

This case is now before the Court for hearing the plaintiff's motion for a new trial therein.

Hon. Arthur F. Odlin appeared in behalf of the motion; Messrs. Gibbs, Gale & Carr and Sr. Vicente Ilustre in opposition thereto.

After hearing the parties through their respective attorneys and examining the record, it appears that this was a case tried before Hon. John C. Sweeney, in the third Chamber of this Court and without going into the merits of the evidence offered and the facts found therein, or the conclusions arrived at in that Honorable Court I do not feel, in the absence of extraordinary error, like interfering in any way with the judgment entered, as I would have to do if the motion for a new trial was granted.

I therefore deny the motion for a new trial.

Manila, P. I. May 18th, 1906.

A. S. CROSSFIELD, *Judge.*

41 THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3363.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINES and VICENTE ILUSTRE, as Guardian,  
Defendants.

*Exception to Order.*

To-day comes the plaintiff association in the above entitled cause and excepts to the order of the Honorable A. S. Crossfield, dated May 18, 1906, denying the motion for a new trial, and at the same time prays that a period of thirty days, to count from today, be granted to present a bill of exceptions.

Manila, May 22, 1906.

(Signed)

KINEEY, ODLIN & LAWRENCE,  
*Attorneys for Plaintiff Corporation.*

Received Copy today, May 22, 1906, and we agree to the extension asked.

(Signed)

GIBBS, GALE & CARR,  
*Attorneys for Defendants.*

Approved: Manila, May 23, 1906.

(Signed) A. S. CROSSFIELD, *Judge.*

42 On July 12, 1906, the said cause was received in the Office of the Clerk of the Supreme Court.

On the 20th of the same month the printed bill of exceptions was filed therein.

Thereafter and on the 28th day of February, 1907, the brief of the plaintiff and appellant was filed in the said Office, the following assignment of errors being attached thereto:

I. The trial court erred in rendering a judgment against the plaintiff.

II. The trial court erred in declining to render a judgment against the defendants.

III. The trial court erred in not finding as a concrete fact that R. W. Brown was not the agent of the plaintiff in certain of his dealings with the defendant Francisco Martinez.

IV. The trial court erred in permitting counsel for defendants to cross-examine the witness Pedro Cantero upon matter distinct from the subject matter of the direct examination.

V. The trial court erred in failing to set forth clearly the grounds upon which the case of the plaintiff failed.

VI. The trial court erred in finding that the defendant Francisco Martinez was, at the time of the execution of the document upon which this action is based, an imbecile and incompetent to transact this or any other matter of business.

VII. The Trial Court erred in holding that the facts set out in the court's decision in Case No. 3365 (R. G. No. 3472 of the Supreme Court), and the reasons why the contract in that case cannot be enforced, are applicable to the present case.

43 VIII. The trial court erred in directing the plaintiff to deliver to the guardian of the defendant Francisco Martinez, possession of the steamer "Germana."

IX. The trial court erred in declining to render judgment in favor of the plaintiff for the excess of disbursements over receipts in connection with the said steamer, as well as for the amount of the original debt.

(Signed)

KINNEY, ODLIN & LAWRENCE.

44 On the ninth day of December, 1907, the brief of the appellees was filed in the office of the Clerk of the Supreme Court, and on the 21st day of January, 1908, the said cause came on for hearing before the Court, which hearing was continued the following day, as appears from the minutes of the Supreme Court of the 21st of January, 1908.



Thereafter and on the 29th day of February, 1908, a decision was rendered by said Supreme Court in the words and figures following, to-wit:

45 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3471.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

WILLARD, J.:

This case and case No. 3472 between the same parties were tried at the same time in the court below, and all the evidence received was made applicable to each case. This case No. 3471 was brought to recover against the defendants, Francisco Martinez, and his guardian, Vicente Ilustre, a judgment for P30,000, with interest from the second day of May, 1903, at eight per cent per annum, and for an order directing the sale of the steamer "Germana" to satisfy such judgment. Several answers were presented, but the last answer and counter-claim was filed on the 21st of March, 1903, during the trial of the case, and apparently to make the pleading correspond to the facts claimed by the defendants to have been proven.

The other action, No. 3472, was brought to recover the sum of P159,607.81, with interest at the rate of eight per cent per annum from the presentation of the complaint, and for a judgment directing the sale of certain real property described in the complaint to pay such sum. The last amended answer in that case was presented during the trial, and evidently for the same purpose as in case No. 3471. It is more extensive than the answer in this case, but the defense in both are substantially the same, and so far as such defenses are concerned, what is said in the opinion in this case will be applicable to the other case No. 3472.

On the 20th day of January, 1903, the defendant, Francisco Martinez, borrowed from the plaintiff, P30,000.00, which was then credited to him in an open current account with the plaintiff bank. From time to time during the period above mentioned, he borrowed other sums from the Bank, which were evidenced by promissory notes, and the proceeds of which notes were passed to the credit of his current account. Against this account, he drew his checks from time to time which were paid by the bank. The amount of money which the bank had disbursed in payment of these checks on June 9, 1904, and which appeared there as an overdraft in his account current, was P158,378.27. Martinez owed the bank in addition thereto \$13,000.00 gold, and \$9,000.00 Mexican Currency upon other accounts. That the bank actually disbursed all of this money

in payment of checks which were in fact drawn upon it by Martinez is clearly proven by the evidence.

It is claimed, however, that for various reasons, the bank is not entitled to recover anything by reason of such payment.

The first defense is based upon the allegation that during the period mentioned, Francisco Martinez, was mentally incapacitated to transact business, and was not competent to manage his affairs. It appears that on the 14th day of November, 1903, Charles C. Cohn was by an order of the Court of First Instance of Manila appointed guardian of Francisco Martinez, on the ground that he was a spendthrift and a prodigal and was mentally and physically incapable and incompetent to manage his estate or to care for himself. Charles C. Cohn was made a defendant in this action as such guardian, but later he resigned his trust and Vicente Ilustre was appointed to succeed him and substituted as a defendant herein. It is not questioned that all of the transactions out of which this indebtedness to the bank grew took place prior to the 19th day of November, 1903, and that the bank had prior to that time paid out all the money which it now seeks to recover with the exception of certain interest thereon. The question arising under this defense is whether in fact Martinez was during the spring and summer of 1903 mentally incapable of managing his affairs. The court found that during that time he was an imbecile and incompetent to transact this or any other business, and rendered judgment for the defendants in both cases. The evidence in the case is entirely against this finding of the court below. In fact there is no substantial evidence to support it. The only evidence presented by the defendants to prove their claim consisted of a statement of the witness, Cantero, and a statement of the witness, Cohn. Cantero was called as a witness by the plaintiff for the purpose of identifying a certain document; being upon the stand, the defendants cross-examined him upon the entire case, and he was in fact their principal witness his evidence filling more than fifty pages of the record. His only testimony upon this point was this: "I consider him incapacitated because he signed every document that was presented to him." He afterwards stated, however, that Martinez had a good memory, and would remember the check he signed. Moreover, he said that

Martinez read all the documents presented to him before he signed them. The testimony of Mr. Cohn is of no importance in the case because his relations with Martinez commenced with his appointment as guardian, and after the debt in question had been incurred. This testimony of Cantero is all the evidence which there is in the case to show that Martinez was incompetent to transact business. Mr. Early, a witness for the defendants, and who acted as the lawyer for Martinez during all the time covered by these transactions, testified that Martinez discussed his affairs as any business man would, in a rather intelligent way, and that he seemed to be rather shrewd in some respects about his business. Mr. Wolfson, the witness for the plaintiff, testified that he went to see Martinez for the purpose of collecting a note for P26,000.00 which Martinez had signed. Martinez told him that

the note was given for a gambling debt, and was worthless and the most that Mr. Wolfson could get Martinez to do after a long conversation with him was to promise to pay P1,000.00 in settlement for this P26,000.00 note, and even then Martinez insisted upon paying the thousand pesos in installments. There is considerable evidence in the case relating to the money lost in gambling by Martinez. A witness for the defendant testified that Martinez when he lost, never paid cash, but always gave his notes; that he never paid these notes in full; that on notes of P1,000.00 he would pay ten per cent, but on notes for larger amounts five per cent, and he testified that a friend of his had a note against Martinez for P40,000.00, which Martinez took up by paying two per cent of its face. A man who can play at cards with a professional gambler, lose P40,000.00, pay no part of that loss in cash, give his note therefor, and afterwards settle the note for P800.00, cannot be said to be wanting in mental capacity. There is nothing whatever in this defense, and we hold that Martinez during the time in question was mentally capable of managing his affairs.

49 There is an allegation in the answer to the effect that Martinez signed these checks and notes by reason of threats made against him by R. W. Brown, agent of the plaintiff bank, and Ricardo Regidor. This matter does not seem to be mentioned in the appellee's brief, and this defense finds no support in the evidence.

The most of the brief is, however, devoted to the defense of conspiracy, and it is alleged that on the first day of January, 1903, Brown, the manager of the plaintiff bank, Ricardo Regidor, and various employés of these people entered into a conspiracy to defraud Martinez and to get possession of his property. The court below in case No. 3472 found that this conspiracy was formed, and that the signature of Martinez to these various checks and documents was obtained by fraud in pursuance of such conspiracy, and its judgment for the defendants in both cases is based in part upon this ground. Upon this question of conspiracy, certain facts are undisputed. Among these are the following:

Prior to the 20th day of January, 1903, when Martinez opened his account with the bank, he had been gambling at cards for several months. He testified at the trial that prior to the date last named he had lost in this way more than P300,000. The witnesses for the defendants testified that when Martinez lost he never paid cash but always gave his note, and there were notes of this character outstanding against Martinez on the 20th of January, 1903, to an amount according to one witness exceeding P200,000. With this gambling and with the execution of these notes, neither Brown, the agent of the bank, nor Regidor, nor any other person connected with them, had anything whatever to do. There is no evidence

50 that any of these alleged conspirators knew anything about Martinez prior to the 20th day of January, 1903. Whether these obligations against Martinez were valid does not clearly appear in the case, but from the testimony of Isidro Martinez, it is probable that most, if not all of the notes, were binding upon Martinez.

The testimony was that the games played were Burro and Monte. It has been held by this court that Burro is not prohibited game, and that a note given for money lost thereat can be collected. (*Reyes vs. Martinez*, Vol. 5, Phil. Rep. 402; *Lichauco vs. Martinez*, Vol. 6, Phil. Rep. 594). The defendant in those cases is the defendant Martinez in this case. An examination of them illustrates the kind of gambling in which Martinez indulged, and the facts in the Lichauco case confirmed the evidence given in this case to the effect that Martinez never paid the face value of his notes, for, in that case, by a payment of P300.00, he secured a credit of his note of P6000.00.

Another fact about which there is no dispute is that neither Brown nor Regidor, nor any one connected with them, had anything to do with the opening by Martinez in the plaintiff bank of his account current. The defendants' own witnesses prove that Isidro Martinez, one of the gamblers who held notes to quite a large amount against Martinez, took the latter to the Bank and introduced him to Brown, the manager. The result was that a few days after this interview and on the 20th of January, 1903, Martinez, having submitted a list of his securities, was given a credit of P30,000.00 in the bank. Isidro Martinez, who does not appear to be a relative of the defendant, testified that for his services in securing this credit, Martinez paid him P3000.00, and that he also paid one Montilvano for similar services P600.00. It was also proven by the de-

51 fendants' witnesses that this account with the bank was opened for the purpose of securing cash with which to pay these outstanding obligations of the defendant Martinez. It is thus seen that, if any conspiracy was ever formed, as claimed by the defendants, it was done after Martinez had incurred the obligations for the payment of which he needed money and after he had opened his account with the bank for that purpose.

It is claimed that Brown and Regidor were the principal conspirators. Regidor died prior to the trial of this action and Brown was absent from the Islands. The principal evidence presented to show the conspiracy was the testimony of Cantero, above referred to, and a large number of documents, most of them prepared under the direction of Regidor, and of letters written to Regidor by various persons interested in the affairs of Martinez. This evidence, so far as it related to acts done by Regidor or statements made to him or statements made by him, was incompetent as against the bank, without prior proof that a conspiracy existed between him and Brown as the representative of the Bank. Section 298, paragraph 6, of the Code of Civil Procedure, provides that evidence may be given upon trial of the following facts:

"(6) After proof of the conspiracy the act or declaration of a conspirator relating to the conspiracy."

This evidence was received at the trial below upon the promise of the defendants to prove later the conspiracy. To our minds no such proof was ever presented. No evidence was received which would tend to show that Brown entered into any conspiracy with Regidor or any one else to defraud Martinez. In order to establish

52 this conspiracy, it was necessary to prove some act of Brown indicating its existence. Cantero, the principal witness for the defendants, on cross-examination, stated that he had never talked with Brown about any of these matters, and that he did not know of his own knowledge that Brown ever received five cents from them. He did testify that he gave a copy of Exhibit 12 to Brown; that this document was written by him at the direction of Regidor. From the document itself, it appears that it was a statement relating to the loan of P30,000, the basis of this action, and the facts therein contained *as* substantially *as* afterwards proved at the trial. He also stated that Brown and Regidor were engaged in the purchase of notes of other persons; that Exhibits 17 to 23 were prepared with the knowledge and consent of Brown—these papers are copies of the last page of the document of the 12th of February, 1904, referred to in the decision of Case No. 3472; that Exhibit 54 is in the handwriting of Brown—this is a note written by Brown to Regidor telling him that Lorenzo del Rosario had protested a note of Martinez for P20000.00; that Exhibit 57, which was signed by Brown, was prepared by Regidor—this is a petition to the Registry of Property concerning the inscription of documents relating to Martinez' property; that he, Cantero, delivered to Brown Exhibit 58, which is a note from Regidor, to Brown, stating that Martinez would present that day for collection three checks for P1000.00 each, executed in favor of Regidor, and saying that there *were* was no objection to paying these; that Exhibit 76 was prepared by Regidor for the use of Brown—this is a statement of the transactions relating to the two steamers, and was admitted by the plaintiff at the trial to be correct, and the evidence so shows.

Cantero also testified that Brown would not pay any checks of Martinez unless they bore the rubrica of Regidor; that he, 53 Cantero, drew checks against his own account in the bank when he had no money therein, and that such checks were always paid; that by an arrangement between Brown and Regidor, letters written by the former to the latter were directed to Cantero, and letters by the latter to the former were signed by the letter "C"; that during a certain period Regidor sent a conveyance to Brown's house which brought Brown to Regidor's office, and that they were in communication with each other almost every day.

There is nothing in any one of these acts which in our opinion shows that Brown had entered into a conspiracy to defraud Martinez of his property; they do show that the relations between Brown and Regidor were very intimate; that Regidor was interested in the relations between Martinez and the bank, and that he prepared documents for execution by Martinez, in favor of the Bank, but there is no evidence to show that these intimate relations were due entirely to the affairs of Martinez. There is no evidence to show that Brown and Regidor were not interested in other affairs, with which Martinez had nothing to do. These daily conferences between the two may have had reference to other transactions than those of Martinez.

It is apparent that none of this evidence indicates in the slightest

manner that Brown ever received any money by reason of any of the transactions between Regidor and Martinez.

The only other evidence in the case is the testimony of two of the gamblers who attempted to collect checks given to them by Martinez.

Isidro Martinez testified that he presented a check for \$1,000.00, drawn by Francisco Martinez on the plaintiff bank, and that Brown refused to pay it, saying that the papers had not yet been arranged, and that he should see Regidor who had charge of them. He saw Regidor who told him that the check grew out of the gambling transactions, and that he must pay Regidor 25 per cent thereon. Martinez agreed to this, and they both went to the bank; Martinez received a thousand pesos, and paid Regidor \$250.00 in the presence of Brown. The same thing happened in connection with another check for \$3,000.00, Martinez leaving with Regidor in the presence of Brown \$750.00; and Ramirez testified that the same thing happened in connection with a check which he had for \$2,000.00. Regidor demanded 33 per cent of this which Ramirez at first refused to pay, but finally went to the bank with Regidor, received the \$2,000.00, and left \$666.00 with Regidor in the presence of Brown; Papa had a check for \$4,000.00 which the bank refused to pay; he saw Brown and offered him \$500.00 if Brown would order it paid. Brown told him to return the next day; instead of that he placed the check in the hands of a lawyer for collection. In regard to these transactions, it may be said in the first place that they do not show that Martinez was in any way defrauded, and do show that the persons who lost the money were Ramirez and Isidro Martinez. In the second place, it does not appear that Brown received any part of this money.

We have stated in substance all of the competent evidence in the case to show Brown's relations with Regidor in connection with the defendant, Martinez, and the case must be decided upon that evidence. Upon it we hold that the conspiracy alleged in the answer is not made out. The very serious question as to whether, if there had been a conspiracy between Brown and Regidor, the bank would suffer thereby, we have not considered. The bank actually having parted with its money to Martinez on checks which in fact were drawn by him, whether or not it would be debarred from maintaining an action against Martinez for the amount of such checks because Brown and Regidor had entered into a conspiracy to get the money fraudulently from Martinez after the bank had paid to him, is a question which we do not discuss nor decide.

The defendants alleged in their answer and the court below found that the \$30,000.00 for the recovery of which this suit was brought, had been paid. The evidence does not support this finding. Martinez having given the bank a note for \$30,000.00 on the 21st day of June, 1903, made his check on the bank for that amount. Some time between the 21st of June, 1903, and the 31st of December, 1903, the bank sur-rendered to Martinez the note for \$30,000.00 in consideration of the check aforesaid, and on the last-named day, charged the check to Martinez's current account. The testimony of the witnesses for the bank is clear and direct that this did not constitute a payment of the debt which was secured by the document

set out in the complaint, but only changed the form of that debt. It was originally represented by a promissory note. At the time the action was brought it appeared in the account current as an overdraft. The debt itself not having been paid, the fact that the form in which it appeared was changed, did not release the security.

It appears that on the 31st day of December, 1903, the amount of money with which the bank had actually parted, by reason of this promissory note for P30,000.00 was not P30,000.00 but was P28,599.13, and when the check for P30,000.00 was on the last named day charged to Martinez, this difference of P1,401.87, instead of being paid to Martinez, was credited to him in the same account current and on the same day. The result is, there-

fore, that the amount for which the steamer "Germana" is held is P28,599.13, with interest from the 31st day of December, 1903. No part of this has ever been paid, for it appears that, although the bank has been in possession of the steamer since the execution of the document of May 2, 1903, yet it has paid out for repairs thereon P10048.00, and the receipts therefrom having been only P3152.52.

It appears that this debt of P30,000.00 is also included in case No. 3472, as shown by an examination of the document set out in that case. The plaintiff, of course, is not entitled to recover this sum twice, and provision is made in the judgment in case No. 3472 to avoid that result. We think that it appears from all the evidence that by agreement of the parties the lien of the Bank upon one-half of the "Don Francisco" was surrendered and it was given a lien upon the "Germana" in its entirety.

The judgment of the court below is reversed, and the case is remanded, with direction to that court to render judgment in favor of the plaintiff and against the defendants, Francisco Martinez, and Vicente Ilustre as the guardian of the defendant Francisco Martinez, for the sum of P28,599.13, with interest thereon, at eight per cent per annum from the first day of January, 1904, and the costs, and directing that the steamship "Germana", if said judgment is not paid, be sold in accordance with law, to pay and satisfy the amount of such judgment. No costs will be allowed to either party in this court.

After the expiration of twenty days, render judgment in accordance with this decision and ten days thereafter return the record to the court *aquo*. So ordered.

Arellano, C. J., Torres, Mapa, Carson and Tracey, JJ., concurring.

57 On the 2nd of March, 1908, notice was sent the parties of the rendition of the foregoing decision, and on the 14th of March Counsel for Defendants and Appellees, having theretofore been granted an extension of time until the 15th of March for so doing, presented the following motion for a rehearing:



## 58 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Come now the Defendants by their attorneys, Gibbs & Gale, and move the Court for a re-hearing in the above entitled actions, which were consolidated in the Trial Court, for the following reasons:—

First. The judgment of the Court is not embraced within the issues joined.

*a.* Because the plaintiff fails to allege a tender of performance or a readiness and willingness on the part of the plaintiff to perform, or a demand upon the defendants to perform, or a refusal of the latter so to do.

*b.* The plaintiff bank, by declaring upon the contract of the 15th of June, 1903, the basis of the complaint in Case No. 3472 as a mortgage, and praying for the foreclosure thereof, shows affirmatively that it is not ready and willing to perform the conditions of said contract on its part to be performed and especially that part thereof which requires the bank to intervene in the partition proceedings, accept a transfer of the property therein described in full satisfaction of the obligation therein recited and to place at the disposal of the defendant Martinez the difference between the stipulated purchase price of said property and the amount of said obligation.

Second. The Court erred in determining that the findings of fact of the Court of First Instance were not sustained by the evidence.

Third. The Court erred in reversing the findings of fact, of the Court of First Instance, and in making new findings of fact.

Fourth. The Court erred in reversing the judgment of the Court of First Instance.

Fifth. The Court erred in rendering judgment for the plaintiff, because said judgment is contrary to law and the findings of fact therein are plainly and manifestly against the weight of evidence.

Sixth. The Court erred in not finding that the instruments of May 2nd and June 15, 1903, forming the causes of action in these cases, were procured from the defendant Martinez by fraud and undue influence, and without consideration.

Seventh. The Court erred in finding that the instrument of May 2, 1903, the basis of Case No. 3471, was not cancelled, released and substituted by the instrument of June 15, 1903, for the reason that the latter instrument specifically provides for the sale and transfer to the Bank of the Steamer "Germana," the security mentioned in the former instrument at a price to be agreed upon, in identically the same manner as it provides for the sale of real estate described in



said instrument of June 15th, and for the reason that the instrument of February 12, 1904, which the Court finds to be a practical compliance with the terms of the instrument of June 15th, recites the sale and transfer to the Bank by the Defendant Martinez of said steamship "Germana" at the stipulated price of Thirty-five Thousand Pesos (P35,000).

60 Eighth. The Court erred in finding that the Plaintiff Bank is not obligated under the terms of the instrument of June 15th to purchase the Steamer "Germana" at the price of P35,000.00 and under the same conditions as those provided for the purchase of the real estate described therein, for the reason that the provisions of said contract with reference to the purchase of said steamer are identical with those stipulated for the purchase of the real estate, and there are no circumstances or proof of any kind tending to support the interpretation placed upon said instrument by the Court to the effect that the instrument of June 15th has no other effect than to release the steamer "Don Francisco" from the lien created by the instrument of May 2, 1903.

Ninth. The Court erred in rendering judgment against the Defendants for any sum whatever, for the reason that neither the pleadings nor the proofs show that the defendants have failed or refused in any respect to comply with the contract of June 15th, nor that the defendants are indebted to the plaintiff bank in any sum whatever, but on the contrary the plaintiff bank, under the terms of said contract in relation with the price stipulated for the property, as set forth in the instrument of February 12, 1904, is assuming the Court's findings to be correct, indebted to the defendants for the difference between the total purchase price of said property and the amount found by the Court to have been advanced by the plaintiff bank to the defendant Martinez.

Tenth. The Court erred in not finding that the considerations recited in each of the instruments of May 2, 1903, and of June 15, 1903, were fictitious, false and fraudulent.

61 Eleventh. The Court erred in finding that the amount sued for in the present actions was disbursed by the Bank on checks drawn by the defendant Martinez.

Twelfth. The Court erred in finding that the Defendant Martinez was not mentally incapacitated and incapable of conducting his affairs at the time of the transactions involved in this case, and in finding that the only evidence offered in support of this allegation was a statement of the witness, Cantero, and a statement of the witness, Cohn.

Thirteenth. The Court erred in finding that the witness Early was a witness for the defense and in therefore considering that the Defendants were bound by his declaration.

Fourteenth. The Court erred in finding that the allegation of the Defendants with reference to the signing of notes and checks on account of threats made by R. W. Brown "finds no support in the evidence."

Fifteenth. The Court erred in finding as an undisputed fact that

Martinez testified that he had lost 300,000 pesos at cards prior to the 20th of January.

Sixteenth. The Court erred in finding that the game of burro is not prohibited by the laws of the Philippine Islands.

Seventeenth. The Court erred in finding that the evidence fails to connect Brown, as representative of the Bank, with the conspiracy and in finding that the evidence referred to in its decisions in said cases was all of the competent evidence to show such connection.

Eighteenth. The Court erred in not finding that the Bank is bound by the fraud of its manager, R. W. Brown.

Nineteenth. The Court erred in not sustaining the defendant's allegation that Ricardo Regidor was the agent and representative of the Bank, acting under the instructions of its manager, Brown, in fraudulently preparing and securing the execution by the defendant Martinez of the documents sued upon and of the various notes and checks, constituting the alleged consideration of the same.

Twentieth. The Court erred in not finding that the Bank, by suing upon the instruments executed by the Defendant Martinez, adopted and ratified the fraudulent means by which they were procured.

Twenty-first. The Court erred in rendering two judgments against the defendants in the cases numbered 3471 and 3472, for the reason that said cases were consolidated and the subject matter thereof constitute one and the same transaction and controversy.

Twenty-second. The Court erred in directing judgment to be entered against the defendants in Case No. 3471 for P28,599.13 or for any sum whatever, after having rendered judgment in Case 3472 for a sum which the Court expressly finds includes the amount of the obligation sued upon in said Case No. 3471, because if the Court's findings are correct, the order in Case No. 3471 should be solely and exclusively for the satisfaction of such part of the judgment in Case No. 3472 as may be made out of the sale of the steamship "Germana," and for the reason that the judgments, as rendered in both of said causes, are indefinite and uncertain in that it cannot be determined therefrom whether in case the steamship "Germana" should sell for less than the amount of the judgment in case No. 3471, the plaintiff would have the right to collect the deficiency, or, in other words, to collect twice, the difference between the amount for which the steamship "Germana" may be sold and the amount for which judgment is entered in Case No. 3471.

63 Twenty-third. The Court erred in finding in case No. 3472 as follows:—"We do not understand that it was admitted at the trial that the Plaintiff took possession of this property after the guardian was appointed."

Twenty-fourth. The Court erred in denying defendants' prayer for the return to the guardian of the property wrongfully seized by the Plaintiff Bank without reference to the time when such seizure took place, for the reason that the instrument of June 15th gives the Plaintiff no right to such possession.

Twenty-fifth. The Court erred in reversing the judgment of the trial court in favor of the defendant and against the plaintiffs for the

gross receipts produced by the properties of the defendant while wrongfully in the possession of the Plaintiff Bank.

Respectfully submitted,

GIBBS & GALE,  
*Attorneys for Defendants.*

Manila, March 14, 1908.

64 On the 17th of March, 1908, the foregoing motion for a rehearing was, by a resolution of the Court, denied.

On the 19th of March, 1908, counsel for defendants and appellees begged leave to present and file in the Supreme Court their exception to the decision rendered on the 29th of February, 1908, reversing the judgment of the trial court in said cause, and to the order of the 17th denying the motion of defendants and appellees for a rehearing in said cause; and on the 21st of March, 1908, the Court allowed the said exception to be filed.

On the 24th of March, 1908, a final judgment was entered in the above entitled cause, which said judgment is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

March 24, 1908. Judgment Book 5, f. Docket No. 3471.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,  
vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

This Court having regularly acquired jurisdiction to try the above entitled action, which is submitted by both parties for decision, after consideration by the Court of the same upon the record and proceedings, its decision and order for judgment having been filed on the 29th of February, 1908?

65 It is ordered that the judgment appealed from the Court of First Instance of the City of Manila, dated March 29th, 1906,

be, and the same is hereby reversed, and the record remanded to the Court from which it came, with directions to that Court to enter judgment in favor of the plaintiff, and against the defendants, Francisco Martinez, and his guardian, Vicente Ilustre, for the sum of P28,599.13, and interest at the rate of eight per cent per annum from the first day of January, 1904, with costs, and that the steamship "Germana" if said judgment is not paid be sold in accordance with law, to pay and satisfy the amounts of said judgment. No costs will be allowed to either party in this Court.

It is further ordered that ———— recover from ———— the sum of P—— as costs.

(Signed)

J. E. BLANCO,  
*Clerk of the Supreme Court of the Philippine Islands.*

[SEAL OF COURT.]

## 66 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the Philippine Islands, and to the Plaintiff and Appellant, the International Banking Corporation and its Attorneys, Messrs. Kinney & Lawrence:

You are hereby notified that Francisco Martinez and his Guardian, Vicente Ilustre, Defendants and Appellees in the above entitled causes and in each of them, ask permission of the Court to file this their exception to the judgments entered in said causes and in each of them by this Court on the 24th day of March, 1908, in accordance with its decisions and decrees of the 29th of February of the same year, reversing the judgments of the Court of First Instance of Manila in said causes and in each of them.

Manila, March 25, 1908.

GIBBS & GALE,

*Attorneys for Defendants and Appellees.*

Received copy, Mar. 25, 1908.

KINNEY & LAWRENCE,

*Attorneys for Plaintiff and Appellant.*

## 67 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

*Petition for Appeal.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioners would respectfully represent that two causes between the same parties entitled as above, pending in the Supreme Court of the Philippine Islands, bearing respectively Docket Nos.

3471 and 3472 were, under Docket Nos. 3363 and 3365, consolidated and tried together in the Court of First Instance, all of the evidence in both causes being made applicable to each of said causes; that cause No. 3471, in which the amount in controversy is P30,000.00 Philippines Currency, equivalent to \$15,000.00 U. S. Currency, is an incident and part of the same transaction and controversy involved in Cause No. 3472, in which the amount in controversy is P159,607.81, Philippines Currency, equivalent to \$79,803.90, U. S. Currency (Act of Congress, March 2, 1902); that although the Court of First Instance rendered two separate judgments dismissing each of said actions, the findings of fact set out in the judgment in cause No. 3365 is referred to and made applicable to the judgment in cause 3363; that the Supreme Court of the Philippine Islands

68 in its decision and decree in cause No. 3471 expressly recites that the alleged debt for which judgment is decreed in that action is included in the obligation for the total amount of which judgment is decreed in cause 3472 and in the latter cause attempts to avoid a double recovery of the amount of the decree in cause No. 3471 by providing that the amount realized from the execution of the judgment decreed in that cause shall be applied on the amount for which judgment is decreed in cause No. 3472; that the said Supreme Court in its decision and decree in cause No. 3472 refers to its decision and decree in cause No. 3471 as a part thereof; that the decision of the Court in cause No. 3471 is in effect nothing more than an order for the execution of a part of the judgment decreed in cause No. 3472, and finally that from the very nature of the controversy in said actions the Supreme Court of the United States cannot determine on appeal cause No. 3472 without at the same time deciding the merits of and determining cause No. 3471, all of which more fully appears from the stipulation of consolidation (Page 1, Tr. of Evidence), the pleadings and the judgments in the Court of First Instance and in the Supreme Court of the Philippine Islands.

That said decision and decree of said Supreme Court of the Philippine Islands entered in cause No. 3471 on the 29th day of February, 1908, is a final decree and is greatly to the injury and prejudice of your Petitioners and is erroneous and inequitable in many particulars which more fully appear from the assignment of errors

accompanying this petition.

69 That said decision and decree of said Supreme Court of the Philippine Islands entered in cause No. 3472 on the 29th day of February, 1908, is a final decree and is greatly to the injury and prejudice of your Petitioners and is erroneous and inequitable in many particulars which more fully appear from the said assignment of errors.

Wherefore, in order that your Petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your Petitioners pray: (a), that they may be allowed to appeal said causes jointly to this Honorable Court, or (b), should it be considered better practice to admit said appeals separately, then your Petitioners pray that they may be allowed an appeal in each of said

causes and that the proper orders touching the security required of them may be made.

FRANCISCO MARTINEZ AND  
His Guardian, VICENTE ILUSTRE,  
By GIBBS & GALE,

*Their Attorneys.*

70 THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

*Assignment of Errors.*

Come now the Defendants by their attorneys, Gibbs & Gale, and say that there is manifest error in the decisions and decrees of the Supreme Court of the Philippine Islands in the above entitled causes and in each of them in this, to wit:

First. The judgment of the Court is not embraced within the issues joined.

a. Because the plaintiff fails to allege a tender of performance or a readiness and willingness on the part of the plaintiff to perform, or a demand upon the defendants to perform, or a refusal of the latter so to do.

b. The plaintiff bank, by declaring upon the contract of the 15th of June, 1903, the basis of the complaint in Case No. 3472 as a mortgage, and praying for the foreclosure thereof, shows affirmatively that it is not ready and willing to perform the conditions of said contract on its part to be performed and especially that part thereof which requires the bank to intervene in the partition proceedings, accept a transfer of the property therein described in full satisfaction of the obligation therein recited and to place at the disposal of the defendant Martinez the difference between the  
71 stipulated purchase price of said property and the amount of said obligation.

Second. The Court erred in determining that the findings of fact of the Court of First Instance were not sustained by the evidence.

Third. The Court erred in reversing the findings of fact of the Court of First Instance, and in making new findings of fact.

Fourth. The Court erred in reversing the judgment of the Court of First Instance.

Fifth. The Court erred in rendering judgment for the Plaintiff, because said judgment is contrary to law and the findings of fact therein are not sustained by the evidence but are plainly and manifestly against the weight of evidence.

Sixth. The Court erred in rendering two judgments against the defendants in the cases numbered 3471 and 3472, for the reason that said causes were consolidated and the subject matter thereof constitute one and the same transaction and controversy.

Seventh. The Court erred in directing judgment to be entered against the defendants in Cause No. 3471 for P28,599.13, or for any sum whatever, after having rendered judgment in Cause 3472 for a sum which the Court expressly finds includes the amount of the obligation sued upon in said Cause No. 3471, because if the Court findings are correct, the order in Cause No. 3471 should be solely and exclusively for the satisfaction of such part of the judgment in Cause No. 3472 as may be made out of the sale of the steamship "Germana", and for the reason that the judgments, as rendered in both of said causes, are indefinite and uncertain in that it cannot be

determined therefrom whether in case the steamship "Germana" should sell for less than the amount of the judgment entered in cause No. 3471, the plaintiff would have the right to collect the deficiency, or, in other words, to collect twice, the difference between the amount for which the steamship "Germana" may be sold and the amount for which judgment is entered in Cause No. 3471.

Eighth. The Court erred in finding that the instrument of May 2, 1903, the basis of Cause No. 3471, was not cancelled, released and substituted by the instrument of June 15, 1903, for the reason that the latter instrument specifically provides for the sale and transfer to the Bank of the Steamer "Germana", the security mentioned in the former instrument at a price to be agreed upon, in identically the same manner as it provides for the sale of real estate described in said instrument of June 15th, and for the reason that the instrument of February 12, 1904, which the Court finds to be a practical compliance with the terms of the instrument of June 15th, recites the sale and transfer to the Bank by the Defendant Martinez of said steamship "Germana" at the stipulated price of Thirty-five Thousand Pesos (P35,000.00).

Ninth. The Court erred in decreeing in cause No. 3472 as follows: "That Francisco Martinez and Vicente Ylustre, as guardian of Francisco Martinez, execute and deliver to the Plaintiff within a time to be fixed by the Court, such a contract as is contemplated by the contract of June 15, 1903, which should be substantially in the form of the instrument above referred to of date February 12, 1904.

Tenth. The Court erred in finding that the Plaintiff Bank is not obligated under the terms of the instrument of June 15th to purchase the Steamer "Germana" at the price of P35,000.00 and under the same conditions as those provided for the purchase of the real

estate described therein, for the reason that the provisions of said contract with reference to the purchase of said steamer are identical with those stipulated for the purchase of the real estate and there are no circumstances or proof of any kind tending to support the interpretation placed upon said instrument by the Court to the effect that the instrument of June 15th has no other effect than to release the steamer "Don Francisco" from the lien created by the instrument of May 2, 1903.



Eleventh. The Court erred in rendering judgment against the Defendants for any sum whatever, for the reason that neither the pleadings nor the proofs show that the defendants have failed or refused in any respect to comply with the contract of June 15th, nor that the defendants are indebted to the plaintiff bank in any sum whatever, but on the contrary the plaintiff bank, under the terms of said contract in relation *with* the price stipulated for the property, as set forth in the instrument of February 12, 1904, is, assuming the Court's findings to be correct, indebted to the defendants for the difference between the total purchase price of said property and the amount found by the Court to have been advanced by the plaintiff bank to the defendant Martinez.

Twelfth. The Court erred in finding that a demand on the guardian would have been unavailing, and that no demand was therefore necessary.

Thirteenth. The Court erred in not finding that the instruments of May 2nd and June 15, 1903, forming the causes of action in these cases, were procured from the defendant Martinez by fraud and undue influence, and without consideration.

74 Fourteenth. The Court erred in not finding that the considerations recited in each of the instruments of May 2, 1903, and of June 15, 1903, were fictitious, false and fraudulent.

Fourteenth-1/2. The Court erred in finding a consideration for the contracts sued upon entirely at variance with the allegations of the complaint and the express terms of the contracts themselves and in reversing the findings of the Court of First Instance holding in effect that the evidence offered by the plaintiff was incompetent and inadmissible to establish such consideration.

Fifteenth. The Court erred in finding that the evidence fails to connect Brown, as representative of the Bank, with the conspiracy and in finding that the evidence referred to in its decisions in said cases was all of the competent evidence to show such connection.

Sixteenth. The Court erred in not finding that the Bank is bound by the fraud of its manager, R. W. Brown.

Seventeenth. The Court erred in finding that the allegation of the Defendants with reference to the signing of notes and checks on account of threats made by R. W. Brown "finds no support in the evidence."

Eighteenth. The Court erred in not sustaining the defendants' allegation that Ricardo Regidor was the agent and representative of the Bank, acting under the instructions of its manager, Brown, in fraudulently preparing and securing the execution by the defendant Martinez of the documents sued upon and of the various notes and checks, constituting the alleged consideration of the same.

Nineteenth. The Court erred in finding that the Defendant Martinez was not mentally incapacitated and incapable of conducting his affairs at the time of the transactions involved in this case, and in finding that the only evidence offered in support of this allegation was a statement of the witness, Cantero, and a statement of the witness, Cohn.



75 Twentieth. The Court erred in not finding that the Bank, by suing upon the instruments executed by the Defendant Martinez, adopted and ratified the fraudulent means by which they were procured.

Twenty-first. The Court erred in finding that the amount sued for in the present actions was disbursed by the Bank on checks drawn by the defendant Martinez.

Twenty-second. The Court erred in finding as an undisputed fact that Martinez testified that he had lost 300,000 pesos at cards prior to the 20th of January.

Twenty-third. The Court erred in finding that the game of burro is not prohibited by the laws of the Philippine Islands.

Twenty-fourth. The Court erred in finding that the witness Early was a witness for the defense and in therefore considering that the Defendants were bound by his declaration.

Twenty-fifth. The Court erred in finding in cause No. 3472 as follows: "We do not understand that it was admitted at the trial that the Plaintiff took possession of this property after the guardian was appointed", and in failing to find from the evidence that the Plaintiff took possession of the property after the decree of incompetency and the appointment of the guardian.

Twenty-sixth. The Court erred in denying defendant's prayer for the return to the guardian of the property wrongfully seized by the Plaintiff Bank without reference to the time when such seizure took place, for the reason that the instrument of June 15th gives the Plaintiff no right to such possession.

Twenty-seventh. The Court erred in reversing the judgment of the trial court in favor of the defendant and against the plaintiffs for the gross receipts produced by the properties of the defendant while wrongfully in the possession of the Plaintiff Bank.

76 Wherefore, Defendants pray that the decisions and decrees of the Supreme Court of the Philippine Islands in the above entitled causes and in each of them be reversed, ordering that final decrees, in favor of the Defendants, be entered in said causes and in each of them, in accordance with the judgment of the Court of First Instance of Manila.

Respectfully submitted,

Manila.

GIBBS & GALE,  
*Attorneys for Defendants*

## 77 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3471.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Having read the petition of the 3rd instant, with the assignment of errors, presented by the attorneys of the Defendants, and it appearing that while there was not a strict consolidation of the two cases Nos. 3471 and 3472 between the same parties by virtue of an express order of the Court and in accordance with the procedural law, and while the amount in litigation in the first of the said cases does not exceed Fifteen Thousand Dollars (\$15,000.00) United States Currency, nevertheless, taking in consideration the fact that the written contract between the parties involves only a single obligation of P159,607.81, the basis of case No. 3472, in which sum the P30,000.00 involved in case No. 3471 is included, appearing in said document various properties and the steamship(s "Don Francisco" and) "Germana" are offered for the purpose of securing its payment; that the connection and intimate relation which exists between both matters are demonstrated by the findings set forth in the respective judgments dictated in each case.

78 Considering further that the decision which in due time may be dictated by the Supreme Court at Washington by virtue of the appeal interposed in case No. 3472 might affect or transcend the other No. 3471, owing to the close connection which exists between both as may be seen from the context of the allegations of the parties and the findings of fact which of a certainty apply to both judgments.

Considering finally that in the midst of the doubt produced by the reasons advanced as to whether or not the appeal interposed in case No. 3471 is admissible, notwithstanding the fact that the amount involved does not reach the sum of \$25,000.00 United States Currency, the most liberal opinion is adopted as is the practice among the courts when treating of the admission of appeal before the tribunal *ad quem*, in as much as it is incumbent upon the latter and not upon the tribunal *a quo* to finally determine the admissibility or inadmissibility of the appeal.

The appeal interposed by the Defendants to the Supreme Court of the United States against the decision and final judgment entered in this case is hereby admitted and it is ordered that the record, evidence, stipulations and other proceedings be translated to the English language, forwarding thereupon a certified copy of the same to the Supreme Court of the United States.

It is further ordered that the bond to be given by the appellants shall be in the sum of \$4,000.00 United States Currency, to respond

for the costs and damages which may be occasioned by reason of the Appeal.

Manila, P. I., April 4, 1908.

(Signed)

FLORENTINO TORRES,

*Justice Supreme Court, Philippine Islands.*

79 THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

No. 3471.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Know all men by these presents, that we Pedro Martinez and Manuel Hidalgo, are held and firmly bound unto The International Banking Corporation at Manila, P. I., in the full and just sum of Four Thousand Dollars, United States Currency, to be paid to the said The International Banking Corporation, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of April, in the year of our Lord, one thousand nine hundred and eight.

Whereas, lately in a cause depending in the Supreme Court of the Philippine Islands between The International Banking Corporation, Plaintiff, and Francisco Martinez and his guardian, Vicente Ilustre, Defendants, bearing docket number 3471, a final decree was rendered against the said Defendants, and the said Defendants having obtained the allowance of an appeal, and filed a copy thereof in the Clerk's office of the said Court to reverse said decree, and a citation having issued directed to the said The International Banking

80 Corporation, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington within one hundred and twenty days from the date hereof.

Now the condition of the above obligation is such that if the said Defendants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation shall be void; else to remain in full force and virtue.

(Sgd.)  
“

PEDRO MARTINEZ.  
MANUEL HIDALGO.

Sealed and delivered in the presence of:

Witnesses:

(Sgd.) VICENTE ALBERT.  
“ MANUEL GARCIA.

Approved (to operate as a supersedeas).

(sgd.)

By FLORENTINO TORRES,  
*Justice of the Supreme Court of the  
Philippine Islands.*

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila, ss:*

Pedro Martinez and Manuel Hidalgo being duly sworn, depose and say, each for himself, that he is worth Four Thousand Dollars United States Currency, over and above all just debts, liabilities and exemptions.

(Sgd.)

PEDRO MARTINEZ,  
*Cedula No. F. 1307662, Manila,*  
*Feb. 7, 1908.*

“

MANUEL HIDALGO,  
*Exempt from Ced. Tax by Reason of Age.*

Sworn to before me this 25th day of April, A. D. 1908.

(Sgd.)

[COURT SEAL.]

SAM. FERGUSON,  
*Deputy Clerk of the Supreme Court*  
*of the Philippine Islands.*

11

Copy.

The United States of America to the International Banking Corporation and to its Attorneys, Messrs. Kinney & Lawrence, Manila, P. I.:

You are hereby notified that in a certain cause in the Supreme Court of the Philippine Islands, bearing docket number 3471, wherein The International Banking Corporation is Plaintiff and Appellant, and Francisco Martinez and his guardian, Vicente Ilustre, are Defendants and Appellees, the Defendants therein have prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed jointly with and as a part of the appeal in cause No. 3472 between the same parties:

Wherefore, you are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within one hundred and twenty days from the date hereof to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to the appellants, Francisco Martinez and his guardian, Vicente Ilustre, as by them prayed and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25 day of April, 1908.

FLORENTINO TORRES,  
*Judstice of the Supreme Court of the Philippines.*

Received copy this 25th of April, 1908.

KINNEY & LAURENCE,  
*Attorneys for the Internacional Banking Corporation.*  
JOHN W. SLEEPER,  
*Att'y for the Internacional Banking Corporation.*

82 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Come now the defendants and state:

That in the above entitled cases and in each of them there are many important documentary proofs, which in their nature cannot be reproduced or accurately described in the certified translation thereof, inasmuch as they include rubrics and special signs endorsed on checks and mutilated and incomplete documents and signatures.

That it is essential to the just determination of the cases that the Supreme Court of the United States inspect said original document and owing to the fact that they are all sewed and bound together it is not practicable to separate them.

Therefore, the defendants pray that, in conformity with paragraph 4 of Rule 8 of the Supreme Court of the United States, the Clerk be ordered to forward to the Supreme Court of the United States the roll of exhibits consisting of original documentary proofs.

Manila, May 8, 1908.

(Signed)

GIBBS &amp; GALE,

*Attorneys for Defendants.*

To the Honorable Florentino Torres, Associate Justice of the Supreme Court of the Philippine Islands.

Having read the foregoing motion, the same is granted.

(Signed)

FLORENTINO TORRES,  
*Associate Justice of the Supreme  
Court of the Philippine Islands.*

1 (2.)

Original.

RECORD No. 3472.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

In Equity.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Submitted January 21, 1908. Decided February 29, 1908.

Be it remembered, that the following proceedings were had in the Court of First Instance of Manila, and in the Supreme Court of the Philippine Islands in the above entitled cause:

2 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,

vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

Action to Foreclose Mortgage.

*Complaint.*

The International Banking Corporation, a corporation created under the laws of the State of Connecticut and doing business in the City of Manila, Philippine Islands, complains against Francisco Martinez and Charles C. Cohn, as guardian of said Francisco Martinez, both residents of said City of Manila, and says:

I. That on June 15, 1903, and for a long time previous thereto, the said Francisco Martinez was indebted to the plaintiff in various sums of money, to wit, the sum of one hundred and ten thousand (110,000) pesos, Mexican currency, amount then due and unpaid as admitted by said Francisco Martinez, as hereinafter set forth; the further sum of thirteen thousand dollars (\$13,000), United States currency, paid by the plaintiff at request of said Francisco Martinez to "El Varadero de Manila" on June 2, 1903; and in the further sum of nine thousand pesos (9,000), Mexican currency, loaned by

the plaintiff to the said Francisco Martinez on the 29th day of November, 1902—all of said amounts of money drawing interest at the rate of eight per cent, per annum from and after the respective dates at which such indebtedness accrued; no part of the same, either principal or interest, has been paid, although the said Francisco Martinez has often been requested to pay the same, and the above mentioned sums are all long since past due.

II. On said June 15, 1903, the said Francisco Martinez, in order to secure the payment of said sums of money, now aggregating one hundred and fifty-nine thousand six hundred and seven dollars and eighty-one cents (P159,607.81), Philippine currency, executed and delivered to the plaintiff his written obligation, wherein and whereby he agreed, besides other things, to convey to the plaintiff (with the right reserved of repurchase) certain tracts of real estate in the said City of Manila owned by him and described as follows, to wit:

(a.) House and lot at corner of Calle Jaboneros and Calle Barcelona, known and described as No. 31 Calle Jaboneros and No. 36 Calle Barcelona.

(b.) House and lot known as Nos. 98 and 100 Calle Principe.

(c.) House and lot known as Nos. 139, 141, 143, 145, 147, 149 Calle Barcelona, with six tenements in the interior of No. 135.

(d.) House and lot at corner of Calle Sevilla and Calle Peñarrubia, known as Nos. 141, 143, 145 Calle Sevilla and No. 24 Calle Peñarrubia.

(e.) House and lot known as Nos. 68, 70, 72, 74, and 4 76 Calle Lavezares.

(f.) House and lot known as Nos. 79, 81, 83 Calle Barcelona.

(g.) House and lot known as Nos. 251 and 253 Calle Eleano.

(h.) House and lot known as Nos. 14, 16, 18, 20, 22 Calle Peñarrubia.

(i.) House and lot at corner of Calle Sevilla and Calle San Nicolas, known as Nos. 80 and 82 Calle Sevilla and Nos. 86 and 88 Calle San Nicolas.

(j.) House and lot known as Nos. 97, 99, 101, 103 and 105 Calle Lara.

(k.) House and lot at corner of Calle Barcelona and Calle Peñarrubia, known as Nos. 151, 153, 155 Calle Barcelona and No. 46 Calle Peñarrubia.

(l.) House and lot at corner of Calle Barcelona and Calle Peñarrubia, known as Nos. 157, 159, 161, 163, 165, 167, 169, and 171 Calle Barcelona, with three tenements in the interior of No. 173 Calle Barcelona and Nos. 45 and 47 Calle Peñarrubia.

(m.) House and lot known as Nos. 93, 95, and 97 Calle Sevilla.

(n.) House and lot known as No. 100 Sevilla interior, with seven tenements.

Making a total of 14 properties, the plaintiff now being in possession of the first six above described, and the defendant Cohn, as guardian aforesaid, being in possession of the last eight above described.

III. A copy of said written obligation dated June 15, 1903, is hereto attached and marked "Exhibit A" which it is prayed may be deemed as part of this complaint.

IV. The plaintiff alleges that said obligation is, in fact and in law, a mortgage given to secure the payment of the items of debt above set forth, and makes known to the Court that none of the conditions thereof have been fulfilled by said Francisco Martinez.

V. On November 19, 1903, the said Charles C. Cohn was appointed as guardian of said Francisco Martinez, by the Court of First Instance of Manila, and he is therefore made a party defendant in this action.

The plaintiff therefore prays as follows: that said defendant Francisco Martinez, and the said Charles C. Cohn, as his guardian, be ordered to pay to the plaintiff the said sum of one hundred and ninety-nine thousand six hundred and seven pesos and eighty-one cents (P159,607.81), Philippine currency, with interest at the rate of eight (8) per cent. per annum from and after the date of the filing of this complaint; that, in case of failure to comply with said order, the above described real estate may be sold under the direction of the Court, or as much thereof as may be necessary to pay the amount then due the plaintiff: that the defendants pay the costs of this proceeding: and that in case the net proceeds of the sale of said real estate be insufficient to satisfy the claim of the plaintiff, the latter may have an execution for such deficit against the other property of said Francisco Martinez: and for such other relief in the premises as the Court may deem just and proper.

PILLSBURY & SUTRO,

*Attorneys for Plaintiff.*

Presented and filed Feb. 25, 1905.

*Exhibit "A" Attached to Plaintiff's Complaint in Case No. 3472. Contract of June 15th, 1903.*

I, Don Francisco Martinez y Garcia, resident of Manila, Province of Manila, Philippine Islands, of age, married, merchant, and to all of whom the present may concern, cause to appear:

That, whereas, I have received and am debtor at the present time to the International Banking Corporation, for the amount of different loans or advances which the said Bank has made to me, with interest at the rate of 8% per annum, to-wit: The promissory notes which I have executed on certain dates and which are now in possession of the Bank, amounting to the sum of 110,000 pesos; a loan of 30,000 pesos with guaranty of the steamers Don Francisco and Germana; the amount of a mortgage existing upon the house at Calle Barcelona, corner of Jaboneros and Eleano, and corner of Balleros, both in the barrio of Binondo, in the sum of \$13,000 United States currency which the Bank has paid to the Association Varadero of Manila; also 9,000 pesos, the amount of the instrument No. 814 of the 29th of November, 1902.

I have agreed with the said International Banking Corporation to the extinction of said obligations and its assistance in the parti-



tion of the property of the conjugal partnership of Martinez-Illustrado with my son, Don Pedro Martinez in the manner as follows:

(1.) I obligate myself to sell with right of repurchase to the International Banking Corporation, all the houses which have been adjudicated to me in said partition, a list of which is as follows: house and lot Calle Jaboneros and Barcelona, Nos. 31 and 36; house and lot, two entrances, Calle Elcano, Nos. 251 and 253; house and lot Calle Principe, Nos. 98 and 100; house and lot Calle

7 Barcelona, Nos. 139 to 149 and six entrances in the interior No. 135; house and lot Calle Peñarrubia, Nos. 14 to 22 and five entrances; house and lot Calle Sevilla, Nos. 80, 82, 86 and 88; house and lot Calle Sevilla and Peñarrubia, Nos. 141, 145 and 24; house and lot Calle Lavezares, Nos. 68 and 76; house and lot Calle Lara, Nos. 97 to 105 (two houses); house and lot Calle Barcelona Nos. 81, 83 and 79; house and lot Calle Barcelona and Peñarrubia Nos. 151 to 171 and 45 and 47, with three entrances in the interior No. 173; house and lot Calle Sevilla, Nos. 93, 95, and 97; house and lot Calle Sevilla, No. 100, interior with seven entrances; steamer Germana;

(2.) The Bank, on its part, obligates itself to sell absolutely to my son, Don Pedro Martinez, all the houses, the half of which were previously sold and hypothecated as of my own property and to cancel for this reason the loans upon the same which it is my duty to pay, delivering them free of such liens to my son, Don Pedro Martinez;

(3.) I also obligate myself to sell to the said Bank all and in its entirety, the steamer Germana, leaving free the guaranty which I previously gave to the Bank upon the half of the steamer Don Francisco which, in its turn, shall become completely free and shall be delivered by the Bank to my son, Don Pedro Martinez;

(4.) I also obligate myself to sell to said Bank my participation in the properties situated in the Province of Batangas, town of Balayan, and belonging to the conjugal partnership of Martinez-Illustrado, completing with this amount the entire sum of the obligations which I have or may have with such bank for which purpose I authorize the Bank to intervene in my name in the said partition and carry out the same extra-judicially with my said son, Pedro Martinez, in

8 just and equitable manner, including in the same whatever money, rights, credits or shares which belong to me, which sale shall be understood to be for a price equivalent to the values shown in the partition;

(5.) The International Bank obligates itself to place in account current at my disposition any excess of money which may result in my favor from the foregoing obligations, according to the price of the sales agreed upon, or which may be agreed upon for said sales, all with the right to repurchase within the period of six months.

(6.) The Bank obligates itself to accept, for the accomplishment of the right of repurchase at its maturity, the sum of 4,000 pesos monthly, by which I shall extinguish the purchase price of said sales during the term stipulated and the extensions in their case for said repurchase;

(7.) The Bank shall place at my disposition in account current, the excess of the amounts of said sales as soon as the titles of property may be delivered to it and properly registered and not before;

(8.) It shall be the obligation of the Bank every six months to extend the period of the rights of repurchase, in the event that the monthly payments of 4,000 pesos agreed upon shall be paid punctually by me to extinguish and satisfy the amounts of the sales;

(9.) For the purpose of effecting the preceding payment, I cede and transfer to the Bank my usufruct in the third part of the property set apart to my son, the amount of which I dedicate wholly to the payment of said obligation;

(10.) If for any reason I should not make the monthly payment of 4,000 pesos and for this reason on maturity of the right of repurchase the same shall be held to have expired, without the right of extension to which I would otherwise be entitled the Bank on consummating the sale shall return the partial payments received.

(11.) I obligate myself to execute said instruments of cancellation, transfer and adjudication as may be necessary to comply with and carry into effect that which is above agreed to.

#### Acceptance.

Don Robert Wemyss Brown, of this neighborhood, of age, married and a merchant, in his capacity as directing agent to Manila of the International Banking Corporation, as appears from the proper instrument of power of attorney executed by Don William L. Moyer and James H. Rodgers, President and Secretary, respectively, of said Banking Corporation, residing in the City of New York, on the 14th of March, of the present year, accepts as stipulated by him of the said Francisco Martinez, all that which is set forth, and obligate-himself in his turn to comply with and carry into effect that by him accepted upon which the contracting parties, after the same having been carefully read, affirm and ratify and its contents are signed this 15th day of June, 1903.

(Signed)

(Signed)

FRANCISCO MARTINEZ.

ROBERT W. BROWN.

In the presence of:

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the City of Manila, of the province mentioned, this 15th day of June, 1903, appeared personally before me, Francisco Martinez y Garcia, without certificate of registration on account of being exempt from payment of the same owing to the fact that he is more than 55 years of age, and Don Robert W. Brown, with his certificate No. 153141, issued the 13th of May, 1903, by A. W. Hastings, Collector of the City of Manila, whom I certify to be the persons who executed the documents above set forth

and who ratify the same as being their free and voluntary act and deed.

(Signed)  
(Signed)

FRANCISCO MARTINEZ.  
R. W. BROWN.

Before me,  
(Signed)  
[SEAL OF NOTARY.]

VICENTE G. AZAOLA,  
*Notary Public.*

My appointment expires January 1, 1905.

11 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ et al., Defendants.

Now comes the defendants in the above entitled cause and demurs to the complaint filed by the plaintiff in this action, for the following reasons, to-wit:

1. That there is a confusion of parties defendant, in this, that the defendants named in this cause are Francisco Martinez and Charles C. Cohn, as guardian of the person and property of said Francisco Martinez, and it is impossible to unite in one cause of action two persons, one of whom is the guardian of the person and property of the other.

Wherefore the defendants pray that they may be acquitted of the complaint, with the costs in their favor.

Manila, March 21, 1905.

(Signed)

COUDERT BROTHERS,  
JOHN W. HAUSSELMANN,  
CHARLES C. COHN,  
DANIEL R. WILLIAMS,  
*Attorneys for Defendants.*

Received copy today, March 21, 1905.

(Signed)

ARTHUR F. ODLIN, FOR  
PILLSBURY & SUTRO,  
*Attorneys for Plaintiff.*

Filed on the 22 of March, 1905. 8-20 A. M. J. McNicking  
Clerk.

12 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of Manila, Part III.

Civil. No. 3365.

THE INTERNATIONAL BANKING CORPORATION

vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of F. Martinez.

The defendant Francisco Martinez comes now and demurs to the complaint for the following reasons:

I. That the complaint is defective, or that there exists in it a confusion of parties.

II. That the facts alleged in the complaint do not constitute a cause of action.

Wherefore he prays the court to sustain this demurrer and to acquit him of the complaint.

Manila, March 30, 1905.

(Signed)

FRANCISCO MARTINEZ.

Received copy March 30, 1905.

(Signed)

PILLSBURY & SUTRO,

*Attorneys for Plaintiff.*

Filed March 30, 1905.

R. MORENO,

*Ass't Clerk.*

13 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

No. 3365.

THE INTERNATIONAL BANKING CORPORATION

vs.

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said Francisco Martinez.

After an examination of the demurrers of the defendants, Francisco Martinez and Charles C. Cohn as guardian of the same, to the complaint, and not believing the same well-founded,

The said demurrers are overruled and each of the defendants is granted five days in which to answer.

Manila, April 13, 1905.

(Signed)

MANUEL ARAULLO, *Judge.*

Copy of the foregoing resolution sent to-day, April 13, 1905, to the attorney for the plaintiff, for his information, who will give notice of the same to the other party.

R. MORENO,

*Assistant Clerk, Court of First Instance, Manila, P. I.*

14 UNITED STATES OF AMERICA,  
- *Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
versus  
FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

*Answer and Cross-complaint.*

Now come the defendants in the above entitle- action, and defending the alleged cause of action in the complaint of the plaintiff set forth, allege:

That the defendants deny each and every, all and singular the allegations contained in said complaint of plaintiff, and the whole thereof.

And as further, separate and distinct defense to said alleged cause of action, defendants allege:

## I.

That on the 19th day of November, 1903, the Court of First Instance of the City of Manila, by its order duly given and made, duly declared the defendant, Francisco Martinez, a prodigal and incompetent, and named as guardian for said defendant, Francisco Martinez, his co-defendant herein, Charles C. Cohn.

## II.

15 That thereafter, to wit, on the 3rd day of February, 1904, in an action there pending, wherein the defendant, Francisco Martinez, is plaintiff and the Honorable John C. Sweeney, as Judge of the Court of First Instance of the City of Manila, is defendant, the Supreme Court of the Philippine Islands duly gave and made its order:

“requiriendo al Juez demandado para que se abstenga durante la  
“requiring the defendant Judge to abstain during the pendency of  
pendencia de esta accion o hasta nueva orden de la corte de dic-  
this action or until further order of the Court from making an  
tar auto o sentencia de ningun genero autorizando la venta, dis-  
order or judgment of any kind authorizing the sale, disposal or

posicion o gravamen de los bienes del demandante Don Francisco encumbrance of the properties of plaintiff Don Francisco Marti-Martinez, prohibiendo al mismo tiempo a los funcionarios de dineez, prohibiting at the same time the officials of said Court cho Juzgado de primera instancia, incluyendo al Sr. Charles C. of First Instance, including Mr. Charles C. Cohn, the guardian Cohn, tutor nombrado por el Juzgado, durante el tiempo arriba appointed by the Court, during the time above mentioned from mencionado vendan dispongan o en manera alguna graven los bienes selling, disposing of, or in any manner encumbering the properdel demandante Don Francisco Martinez."

ties of the plaintiff Don Francisco Martinez."

### III.

That said order of the Supreme Court of the Philippine Islands above set forth, has not been revoked or repealed, and the same continues in full force and effect.

And for a further, separate and distinct answer and cross-complaint to said alleged cause of action of plaintiff, defendants allege:

#### I.

That by an order of the Court of First Instance of the City of Manila duly given and made on the 19th day of November, 1903, the defendant, Francisco Martinez, has been declared and adjudged a prodigal and an incompetent, and your defendant Charles C. Cohn is now, and ever since said last named date has been, the 16 duly appointed qualified and acting guardian of his co-defenda-t the said Francisco Martinez, and by the further order of said Court, duly given and made on the 18th day of December, 1903, said defendant Charles C. Cohn has been duly authorized and empowered to administer the properties hereinafter mentioned and described.

#### II.

That on the 31st day of July, 1896, and for many years prior thereto, the defendant, Francisco Martinez, was the duly wedded husband of Dona Germana Ilustre, now deceased.

#### III.

That on said 31st day of July, 1896, and for many years prior thereto, said defendant, Francisco Martinez, and his spouse Dona Germana Ilustre (now deceased) were the owners of certain conjugal property in the Philippine Islands, including the real property designated and referred to in the complaint of plaintiff.

## IV.

That said Dona Germana Ilustre died intestate on the 31st day of July, 1896, leaving defendant Francisco Martinez as her surviving spouse, and one Pedro Martinez as her sole surviving descendant and heir.

## V.

That on the 2nd day of February, 1903, defendant, Francisco Martinez, was in the possession of the real property designated and referred to in the complaint of plaintiff, and the whole thereof under and by virtue of an order of the Court of First Instance of the City of Manila duly given and made on the 25th day of August, 1901, naming and appointing the said Francisco Martinez as Administrator of the conjugal property of the said Martinez and deceased spouse Dona Germana Ilustre.

## 17 VI.

That on said 2nd day of February, 1903, the said defendant Francisco Martinez, together with the plaintiff herein, made and executed a certain alleged agreement in writing, a copy whereof hereto attached, marked "Exhibit A" and made a part of the answer and cross-complaint. That under and by virtue of the terms of said writing, the respective parties thereto unlawfully and illegally stipulated and agreed that the property constituting the estate of which the said Francisco Martinez was the duly appointed and acting administrator be hypothecated to the plaintiff as security for the payment unto said plaintiff of the sum of \$80,000, Mexican Currency, or such part of said sum as might become due and owing unto said plaintiff of and from the said Francisco Martinez personally.

That under and by virtue of the terms of said writing the respective parties thereto unlawfully and illegally stipulated and agreed that the administration of said real properties constituting said Estate should be conferred upon the plaintiff herein, and likewise unlawfully and illegally promised and agreed that said defendant Francisco Martinez should abstain from administering the said properties.

## VII.

That thereafter, to wit, on or about the 15th day of June, 1903, a certain writing was executed by and between defendant, Francisco Martinez, and the plaintiff, wherein and whereby the respective parties agreed to cancel and annul the alleged encumbrance theretofore attempted to be imposed upon the real properties constituting and comprising the said Estate of Dona Germana Ilustre, and unlawfully and illegally agreed to transfer absolutely unto the said plaintiff all right, title and interest in and to the properties mentioned, designated and referred to in the complaint of plaintiff herein, subject only to the right of redemption in favor of said defendant, Francisco Martinez.

That a copy of said alleged agreement is attached to the complaint of plaintiff herein, to which reference is hereby made and the same is hereby made a part of this answer and cross-complaint.

### VIII.

That thereafter, to wit, on or about the 30th day of June, 1903, said defendant, Francisco Martinez, made and signed, together with the International Banking Corporation, plaintiff herein, a certain writing purporting to transfer and assign unto said plaintiff all right, title and interest in and to all of the real properties designated and referred to in the complaint of plaintiff herein.

### IX.

That said defendant, Francisco Martinez, has not received, nor has the plaintiff paid, consideration whatsoever of any nature or kind, for the alleged agreement to transfer, nor for the alleged transfer of all the real properties hereinbefore referred to, nor for any of them.

### X.

That the above mentioned writings made and signed by said defendant, Francisco Martinez, were so made and signed by the latter, and were accepted by said plaintiff for the alleged purpose of securing and guaranteeing unto the said plaintiff the payment of an alleged personal debt of said Francisco Martinez unto said plaintiff.

That said Francisco Martinez is not indebted unto said plaintiff of any sum or sums whatsoever. That the alleged indebtedness  
19 of said defendant, Francisco Martinez, consists of a fictitious account of moneys alleged to have been paid and expended by plaintiff for and on account of defendant, Francisco Martinez, in the acquisition and satisfaction of certain alleged promissory notes of said defendant, Francisco Martinez. That said alleged promissory notes of said defendant, Francisco Martinez, were and are wholly null and void, as plaintiff then and there well knew, and the moneys paid in the acquisition or satisfaction of the same, or any of them, if any, were so paid without the knowledge or consent of said defendant, Francisco Martinez.

### XI.

That during all the times hereinabove mentioned, the defendant, Francisco Martinez, has had, and now has, insufficient mental capacity to permit him to administer his business affairs, or to duly comprehend the significance, object or effect of the writings hereinbefore mentioned and referred to. That by reason of said lack of mental capacity the said Francisco Martinez has been during all of said time unduly susceptible to undue influence, artifice and circumvention of the agents and representatives of the plaintiff. That in the making and signing of said alleged contracts above mentioned, and the whole thereof, the said defendant, Francisco Martinez, has not exercised a deliberate judgment but has been domi-



nated and controlled therein by the superior capacity and the undue influence of the agents and representatives of said plaintiff.

## XII.

That heretofore, to wit, on or about the 30th day of November, 1903, the plaintiff, unlawfully and illegally availing itself of the alleged transfers and assignments of all of the real properties designated and referred to in the complaint of plaintiff herein, and lawfully claiming to be the owner of said real properties, has  
20 taken possession of said real properties and has continued to retain possession thereof to the present time, appropriating to its own use and benefit the income and earnings produced by the said real properties.

Wherefore, defendants pray that the judgment of this Honorable Court may issue, ordering, adjudging and decreeing:

1. That plaintiff take nothing by this its said action against the defendants.

2. That the plaintiff has no right, title or interest in or to the said real properties designated and referred to in the complaint of plaintiff.

3. That the alleged transfers and encumbrances of said real properties in favor of plaintiff be cancelled and annulled.

4. That the plaintiff render unto defendants a full, true and correct account of all moneys had and received for and on account of the administration of said real properties, and pay the same unto defendants.

5. The plaintiff pay unto defendants the costs of suit incurred by the latter.

6. And such other and further relief as may be meet and proper in law and in equity.

COUDER- BROTHERS,  
CHARLES C. COHN,  
*Attorneys for Defendants.*

21 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ and CHARLES C. COHN, the Last as Guardian  
of said Francisco Martinez.

*Demurrer to the Cross-complaint.*

Now comes the plaintiff in the above entitled cause and interposes a demurrer to the cross complaint presented therein, and says:

That the facts set forth in said cross complaint do not constitute cause of action.

That this demurrer refers more particularly to paragraphs 6, 8, 10, 11, and 12 of said cross complaint; and the plaintiff prays that they be stricken from the said cross complaint.

Manila, P. I., June 14, 1905.

(Signed)

ARTHUR F. ODLIN,  
PILLSBURY & SUTRO,  
*Attorneys for the Plaintiff.*

Received copy today, June 14, 1905.

COUDERT BROTHERS,  
*Attorneys for Defendants.*

THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Civil Case No. 3365.

THE INTERNATIONAL BANKING CORPORATION  
against

FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez.

This case is on for hearing upon demurrer to defendant's cross-complaint and the Court being of the opinion that the grounds of demurrer are not well taken, doth overrule and disallow the same and five days are allowed plaintiff within which to answer said cross-complaint.

To which ruling of the Court, the plaintiff excepts.

Dated Manila, P. I., August 26th, 1905.

(Signed)

JOHN C. SWEENEY, *Judge.*

Notice of above order sent to parties this 30th day of August 1905 registered mail.

(Sgd.)

R. HERAS,  
*Assistant Clerk, Court of First Instance, Manila, P. I.*

23 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

R. G. No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ and C. C. COHN, as Guardian of Francisco  
Martinez, Defendants.

The plaintiff, by its undersigned attorneys, excepts to the decision of August 26, 1905, notice of which was received to-day, rendered in the above entitled cause, overruling the demurrer to the cross complaint presented by the plaintiff, and granting a period of five days within which to answer.

Manila, P. I., September 1, 1905.

(Signed)

PILLSBURY & SUTRO.  
*Attorneys for the Plaintiff.*

Received copy today, September 1, 1905.

COUDERT BROTHERS.

24 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
Francisco Martinez, Defendants.

*Answer of Plaintiff to Cross-complaint.*

And now comes the plaintiff in the above entitled case by its undersigned attorneys and answers the cross-complaint herein filed and says:

I.

The plaintiff admits the truth of the allegations contained in paragraphs 1, 2, 3, and 4 of said cross-complaint;

II.

The plaintiff denies the allegations contained in paragraphs 5, 9, 10 and 11 of said cross-complaint.

## III.

With reference to the 6th paragraph of said cross-complaint the plaintiff admits that the defendant Francisco Martinez and the plaintiff executed the agreement in writing marked exhibit "A", by virtue of which it was mutually agreed between the parties that the real estate described therein should be hypothecated to the plaintiff as security for the sum of money therein mentioned, or such part thereof as might be due to the plaintiff from said defendant Francisco Martinez, but this plaintiff denies that such agreement  
25 and stipulation was unlawful and illegal; on the contrary, the plaintiff insists that the same was valid and should be enforced against the defendant Francisco Martinez and his co-defendant Charles C. Cohn. The plaintiff further denies that the administration of said real estate was conferred upon the plaintiff by any unlawful or illegal agreement, nor that the said Francisco Martinez should abstain from administering the said properties under any unlawful and illegal promise; on the contrary, the plaintiff says that such agreements were valid and should be enforced.

## IV.

With respect to the 7th paragraph of said cross-complaint, the plaintiff admits that the document dated June 15th, 1903, was executed by and between the defendant Francisco Martinez and the plaintiff, whereby it was agreed that the said real estate described therein should be transferred absolutely to the plaintiff, subject only to the right of redemption in favor of said defendant Francisco Martinez, but said plaintiff denies that said agreement was unlawful or illegal, and on the contrary insists that the same was good and valid and should be enforced against both defendants.

## V.

With reference to the 8th paragraph of said cross-complaint the plaintiff admits the execution on or about June 30th, 1903, by and between the plaintiff and the defendant Francisco Martinez, of the document referred to in said paragraph 8 of said cross-complaint, but  
26 denies that said writing merely purported to transfer and assign unto the said plaintiff all right, title and interest in and to the real estate described therein; on the contrary said plaintiff avers that said writing did operate as a transfer and assignment as set forth therein, subject, however, to the right of said defendant Francisco Martinez, to pay the indebtedness secured by said document and previous documents and thereby release said real estate from the lien created in favor of the plaintiff.

## VI.

With reference to paragraph 12 of said cross-complaint, the plaintiff admits that it has taken possession of a portion of said real estate and has continued to retain possession thereof to the present time, but denies that it has been in possession of all said property although

entitled to such possession, for the reason that the defendant Charles C. Cohn, as guardian of said Francisco Martinez, has himself been in possession of a portion of said property; the plaintiff denies all allegations contained in said paragraph 12 of said complaint as to the unlawful or illegal acts of the plaintiff in availing itself of the stipulations and agreements in said document of November 30, 1903.

Wherefore the plaintiff *has* fully answered the said cross-complaint, prays judgment of the Court that the same be dismissed and that both the defendants be declared entitled to no relief against the plaintiff by reason of said cross-complaint; and the plaintiff further prays judgment against said defendants as prayed for in the original complaint on file in this case.

Manila, P. I. Sept. 4, 1905.

PILLSBURY & SUTRO,  
*Attorneys for International Banking Corporation.*

Received copy this 4th day of September 1905.

CORDERT BROTHERS,  
*Attorney- for Defendants.*

27 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

Case No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
versus  
FRANCISCO MARTINEZ and CHARLES C. COHN, Guardian of Said  
Francisco Martinez, Substituted by VICENTE ILUSTRE, Defendants.

*Motion.*

Comes now Vicente Ilustre, Guardian as aforesaid, by his attorneys Gibbs, Gale & Carr, and moves the Court to be allowed to amend defendants' answer and counter-claim heretofore made and filed by substituting therefor the amended answer and cross-complaint tendered herewith for the following stated reasons:

1st. That in the preparation of the defense of said action said defendant Guardian has within the past ten days discovered new evidence which materially changes the nature of the defense to be made to plaintiff's complaint and which newly discovered evidence is necessary and material for the proper defense of said action and which newly discovered evidence in furtherance of justice requires the substantial alteration and amendment of said former answer and cross-complaint.

2nd. That said amendment is necessary to correct mistaken and inadequate allegations in said former answer and cross-complaint.

3rd. That said amendment is necessary in order that the actual merits of this controversy may be speedily determined.

28 The attached affidavit of Herbert D. Gale is offered in support of this motion.

Manila, February 27th, 1906.

(Signed)

GIBBS, GALE & CARR,  
*Attorneys for Defendant Guardian.*

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

I, Herbert D. Gale, being first duly sworn, depose and say, that I am a member of the firm of Gibbs, Gale & Carr, attorneys-at-Law, and as such one of the attorneys for the defendant guardian in the above action; that during the past ten days new evidence has been discovered which materially changes the nature of the defense to be made to plaintiff's complaint and which newly discovered evidence is necessary and material for the proper defense of said action and which newly discovered evidence requires the substantial alteration and amendment of the former answer and cross-complaint herein; that said evidence could not with due diligence have been discovered at an early date; that said amendment is necessary to correct mistaken and inadequate allegations in the answer and cross-complaint now on file herein, and in order that the actual merits of such controversy may be speedily determined; that the foregoing motion is made at the earliest possible moment and as soon as such newly discovered evidence could be secured and verified and the amendment to accord therewith prepared. Further deponent sayeth not.

(Signed)

HERBERT D. GALE.

Cedula No. A 1325517, dated Manila, January 15, 1906.

Subscribed and sworn to before me this 27th day of February, 1906.

(Signed)

LORENZO A. BARRETTO,

*Notary Public.*

Commission expires Dec. 31, 1906.

29 UNITED STATES OF AMERICA,

*Philippine Islands:*

In the Court of First Instance of the City of Manila.

Case No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
versus

FRANCISCO MARTINEZ, and CHARLES C. COHN, Guardian of said Francisco Martinez, Substituted by VICENTE ILUSTRE, Defendants.

*Amended Answer and Cross-complaint.*

Come now the defendants in the above entitled action by their attorneys, Gibbs, Gale & Carr, and answering plaintiff's complaint,

deny each and every allegation therein contained, not hereinafter specifically admitted, and further answering said complaint allege

### Par. I.

That on the 19th day of November, 1903, the Court of First Instance of the City of Manila, Hon. John C. Sweeney presiding in civil case No. 2230, by judgment and order duly entered and made, adjudged and declared the defendant Francisco Martinez a prodigal and incompetent, and appointed Charles C. Cohn as guardian of his person and estate; that thereafter, to-wit: on the 6th day of January, 1906, the said Court of First Instance, Hon. A. S. Crossfield presiding, appointed co-defendant Vicente Ilustre as such guardian in substitution of said Chas. C. Cohn, resigned.

30

### Par. II.

Defendants admit that on the 15th day of June, 1903, the defendant Francisco Martinez signed the document in favor of the plaintiff mentioned in Par. 2 of the complaint, a copy of which is attached thereto and marked Exhibit "A", but defendants allege that the said Francisco Martinez was wholly ignorant of the contents of such instrument, the contents of which were not disclosed to him, and that at the time of signing said instrument and for a long time prior thereto the said Francisco Martinez had been, was and now is, by reason of old age, disease and mental and physical infirmity mentally incapacitated and wholly incompetent to administer his business affairs or to care for himself or to comprehend the significance, object and effect of said instrument or of any other writings or documents signed by him, and by reason thereof and on account of the facts hereinafter set forth the said instrument is not binding upon the said Francisco Martinez nor upon his estate except in so far as his guardian may see fit to avail himself of its provisions.

### Par. III.

During all the time hereinafter mentioned, Robert Wemyss Brown, was the duly appointed, authorized and acting agent, manager and representative of the plaintiff corporation and during said times Ricardo Regidor and Vicente G. Azaola were the duly employed agents and attorneys of the plaintiff corporation, employed and appointed by said Robert Wemyss Brown acting as such agent and manager.

### Par. IV.

That on or about the 1st day of January, 1903, the said named Robert Wemyss Brown, Ricardo Regidor, Vicente G. Azaola and various other persons in their employ, with full knowledge of the mental incapacity and incompetency of the said Francisco Martinez entered into and formed a conspiracy for the purpose and with the intent and object of cheating and defrauding him of his property as hereinafter set forth.

## Par. V.

That in pursuance of said conspiracy, the said Robert Wemyss Brown, Ricardo Regidor, Vicente G. Azaola and their said agents and employees entered into an agreement and combination with certain gamblers of the City of Manila, whereby the latter were to engage the said Francisco Martinez in games of chance and to secure from his promissory notes and other obligations for the sums lost by him in such games, which said promissory notes and obligations were to be secured by said Brown, Regidor, Azaola and their said agents for an insignificant portion of their face value and to be charged against said Francisco Martinez at their full face value in his accounts with the plaintiff corporation.

## Par. VI.

That in conformity with such agreement and combination the said gamblers did lure and inveigle said Francisco Martinez into playing and engaging in games of chance and did thereby cheat and swindle him out of large sums of money and did secure from him in payment of said sums promissory notes and obligations aggregating more than Two Hundred Thousand Pesos, a large portion of which said notes and obligations were acquired by the said Brown for the plaintiff corporation for an insignificant portion of their face value, and were by him charged upon the books of plaintiff to the account of said Martinez at their full face value and which said promissory notes and obligations so acquired and charged form the basis  
 32 of a large part of the alleged indebtedness set forth in the complaint and mentioned in Exhibit "A" thereto.

## Par. VII.

That pursuant to said conspiracy and for the purpose of further facilitating the cheating and defrauding of said Francisco Martinez, the said Brown opened an account current with the Bank of plaintiff corporation in favor of said Martinez, against which account the said Martinez drew various checks in favor of various persons in payment of gambling debts and other alleged obligations; that when such checks were presented to plaintiff's Bank, payment was refused and the holders thereof were required by the said Brown to and did consult with and secure the approval of said Regidor, whereupon such checks were paid by the plaintiff corporation upon the condition that the holders pay a discount or commission of from 25% to 50% of the face value of such checks; that such checks were then charged to the current account of said Martinez at their full face value and constitute the basis of a part of the alleged indebtedness mentioned in plaintiff's complaint and in Exhibit "A" thereto.

## Par. VIII.

That pursuant to said conspiracy, the said Brown and Regidor, taking advantage of the ignorance and mental incapacity and of the undue influence which they exercised over him by deceit, misrep-



sentations, intimidation and threats induced and forced the said Francisco Martinez to sign and deliver to them various checks aggregating a large sum in payment for certain of the gambling obligations acquired by them as hereinafter stated, and which checks so signed and delivered were charged against the account of said

33 Martinez in plaintiff's Bank and form the basis for a part of the alleged indebtedness mentioned in plaintiff's complaint and in Exhibit "A" thereto.

#### Par. IX.

That on or about the 23rd day of January, 1903, the said Francisco Martinez executed to the plaintiff corporation his promissory note for the sum of Thirty Thousand Pesos, for the purpose of opening the current account as hereinbefore stated; that thereafter on May 2nd, 1903, the said Francisco Martinez was by the misrepresentations, deceit, intimidation and threats and on account of his mental incapacity and by undue influence and coercion induced and forced by the said Brown, Regidor and Azaola to and did sign an instrument of transfer and pledge to plaintiffs of the steamers "Don Francisco" and "Germana" to secure the payment of said obligation of Thirty Thousand Pesos and which instrument forms the basis of this plaintiff's demand against said Martinez in case No. 3363, now pending in this Court; that afterward on the 15th day of June, 1903, by the same illegal means as aforesaid, the said Francisco Martinez was induced to and did again include said obligation of Thirty Thousand Pesos in the alleged indebtedness evidenced by the instrument mentioned in Par. 2 of plaintiff's complaint herein. That after paying said obligation twice as aforesaid the plaintiff corporation still retained the said note of Thirty Thousand Pesos uncanceled until on or about the month of February, 1904, when the same was turned over and delivered by said Brown to his co-conspirator Regidor for safe-keeping pending certain investigations into the frauds perpetrated by said conspirator then being conducted by the Prosecuting Attorney of the City of Manila; it being the intention of said conspirators to eventually collect the amount of said promissory note for the third time.

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#### Par. X.

That on the 13th day of February, 1903, the said Francisco Martinez signed and delivered to said Brown, Regidor and Azaola his check for Nine Thousand Pesos drawn of his current account with plaintiff's bank in favor of Gregorio Legaspi or bearer, for the purpose of paying an obligation of that amount due said Legaspi and secured by *Pacto de Retro* on certain real estate that said check was charged against said account in plaintiff's Bank and the total of said account including said check, forms the basis of the alleged indebtedness of -P-110,000.00 mentioned in plaintiff's Exhibit "A". that notwithstanding such payment and charge, the said Brown, Regidor and Azaola by the illegal means heretofore shown included as a separate item of alleged indebtedness in plaintiff's Exhibit "A" the payment of said obligation of -P-9,000.00 to said Legaspi, thereby attempting to force the said Martinez to pay said obligation twice.

## Par. XI.

That on the 21st day of June, 1903, by the same illegal means heretofore set forth, the said Francisco Martinez was induced and forced by said Brown and Regidor and their said employees to sign and deliver to them a check on his current account for the sum of Thirty Thousand Pesos in exchange for which the said Ricardo Regidor gave to the said Martinez a receipt reciting that he had received said check from the latter for delivery to the International Banking Corporation to be charged against his current account, with the fraudulent intent of fictitiously increasing said current account which was to be and was included in a subsequent instrument executed on the 12th day of February, 1904, as hereinafter set forth.

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## Par. XII.

That pursuant to the conspiracy hereinbefore set forth and in furtherance of its object to deceive and defraud said Francisco Martinez, the said conspirators, Brown, Regidor, Azaola and their said employees and agents by blandishments, deceptions and misrepresentations and by threats and intimidation made and uttered to said Martinez between the dates of about January 1st, 1903, and January 1st, 1905, and because of the mental and physical weakness, incapacity and incompetency of their said victim, obtained and effected complete ascendancy over the mind of said Martinez to such extent as to deprive the said Martinez of all power of independent action that said conspirators continued to have and exercise such ascendancy and undue influence over said Martinez during all of said mentioned time, and during said time, by such deceit, intimidation and threats and by the exercise of such ascendancy and undue influence and because of the mental incapacity and incompetency induced and forced said Martinez to sign and deliver to them large numbers of checks, promissory notes, deeds, mortgages, contracts of pledge and other contracts, agreements and obligations, which said instruments were so signed and delivered without consideration and without benefit whatever to said Martinez.

## Par. XIII.

That pursuant to said conspiracy, and for the purpose of furthering its object of deceiving and defrauding said Martinez, the said named conspirators by the use of fraud, deceit, intimidation and threats induced and forced the said Martinez to sign, amongst other documents hereinbefore mentioned, the instrument set out as Exhibit "A" of plaintiff's complaint, that the signing of said Exhibit  
 36 "A" was entirely without consideration or benefit whatever to said Martinez—the alleged indebtedness recited in said instrument as due from said Martinez to plaintiff being wholly fraudulent and fictitious.

## Par. XIV.

That on the 12th day of February, 1904, and subsequent to said judgment and order of this Honorable Court adjudging and

declaring the said Martinez a prodigal and incompetent person by employing the same illegal means hereinbefore recited, said Brown, Regidor, Azaola and their said employees and agents induced and forced the said Martinez to sign the instrument duplicate of which is hereto attached marked Exhibit "A" and made a part of this answer, purporting to comply with the conditions to be performed on the part of said Martinez under said instrument of June 15th, 1903, set out as Exhibit "A" to plaintiff's complaint, fraudulently increasing therein the alleged indebtedness recited in plaintiff's said Exhibit "A" by including therein other fictitious and fictitious obligations providing, among other things, that the said Martinez should be charged to the current account of said Martinez with said Bank all of the obligations contracted by him subsequent to the date of said instrument (Plaintiff's Exhibit "A") the 15th day of June, 1903, with the intention of increasing the fixed amount mentioned in said new instrument by adding thereto the face value of a check of P30,000.00 of June 21st, 1903, hereinbefore mentioned and also by adding thereto the face value of a large number of fictitious and fraudulent promissory notes signed by said Martinez which were then and there in the possession of the Bank, but which were afterward delivered by said Brown to said Regidor to be produced during the criminal proceedings which had been instituted by the Office of the Prosecuting Attorney against them on account of said frauds.

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## Par. XV.

That after the signing of said instrument of the 12th of January, 1904, the said Brown, Regidor and Azaola, and their agents and employees, fraudulently attempted to falsify said instrument by antedating same to a time previous to the judicial declaration of prodigality and incompetency of said Martinez, for the purpose of avoiding the legal effect of such judgment of prodigality and incompetency.

## Par. XVI.

That if during the transactions herein related there were sums of money actually delivered to said Martinez or paid out to his benefit by said conspirators, such sums were so delivered and paid by said conspirators for the sole and only object of retaining and strengthening their influence and ascendancy over said Martinez and to enable them to accomplish their criminal conspiracy to defraud him of all of his property, for which reasons the said Martinez is not obligated to return or repay any of the sums which have been so delivered and paid out by the said plaintiff.

## Par. XVII.

That notwithstanding the fraud and undue influence used and exercised by the said Brown and his co-conspirators in securing the signing by Martinez of said contract of June 15th, 1903, mentioned in plaintiff's complaint, the defendants allege that they have n

refused to comply with the provisions of said contract requiring the transfer to plaintiff of sufficient of the properties therein described which at the prices therein specified would extinguish any valid and legal indebtedness which might be found to exist against the said

38 Martinez in favor of the plaintiff, and that even if, as alleged in plaintiff's complaint, the defendants have failed to make the monthly payments of P4,000.00 as provided in said instrument of June 15th, 1903, such failure could have only created an obligation to transfer sufficient properties mentioned therein, at the prices stipulated, to cancel any indebtedness which might be due the plaintiff, for the execution of said transfers the plaintiff has never made demand upon the defendants, but on the contrary, has insisted upon enforcing said contract as erroneously interpreted by it in its complain- herein, that is to say, as a lien upon all the property mentioned therein, and has wrongfully and illegally taken possession of and administered for its own use and benefit a large part of said property. That for the foregoing reasons the only action, if any there be, which could accrue to plaintiff under said contract is a personal action against the defendant for the specific performance thereof which performance has never been refused by the defendants and which said personal action could create no lien upon or against the properties of the defendant Martinez.

#### Par. XVIII.

That by reason of the signing and delivery of said instrument of June 15th, 1903, and of the other facts herein pleaded all the instruments previously signed and delivered to plaintiff attempting to encumber and transfer the properties of the defendant Martinez which instruments consist in part of 16 separate deeds with right of repurchase for the specific properties mentioned in the instrument of June 15th, and which were inscribed in the Registry of Property for the City of Manila, were cancelled and became and are null, void and of no effect as is also said instrument of February 12th, 1904, made and signed after the judgment of this Court declaring the said Martinez a prodigal and incompetent.

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#### Par. XIX.

Further answering plaintiff's complaint and by way of cross-complaint and counter-claim, the defendants allege:

(a) All of the facts stated and set forth in the foregoing answer to which reference is specially made and which are made a part of this cross-complaint and counter-claim.

(b) That on or about the 30th day of June, 1903, the plaintiff corporation acting wrongfully and illegally and without right or color of right took possession of a large portion of the properties of the defendant Martinez and have ever since to the present day administered said properties and collected the rents and incomes therefrom aggregating a large sum the exact amount of which is unknown to the defendants and which said rents and incomes the plaintiff corporation has appropriated to its own use and benefit and

has failed, neglected and refused and still fails, neglects and refuses to account to defendants therefor though often requested so to do by reason of which the plaintiff is indebted to the defendant Vicente Ilustre, as guardian, in a large amount, which amount can only be determined by an accounting.

Wherefore defendants pray judgment:

1. That plaintiff take nothing by this its action against the defendants;

2. That the plaintiff has no right, title or interest in and to the real properties and vessel mentioned in plaintiff's complaint;

3. That the alleged transfers and encumbrances of said real properties and vessel in favor of plaintiff together with their registration in the Registry of Property and in the Custom House be cancelled and annulled;

40 4. That the plaintiff render unto the defendant an accounting of all monies had and received by it for and on account of the administration of said real property and vessel and pay the same to defendants;

5. That plaintiff pay the costs of this suit and

6. For such other and further relief as justice and equity may require.

Manila, February 27th, 1906.

GIBBS, GALE & CARR,  
*Attorneys for Defendants.*

Presented and filed 28th of February, 1908.

41 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of Manila.

Cause No. 3365.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff,  
versus

FRANCISCO MARTINEZ and CHARLES C. COHN, Guardian of said  
Francisco Martinez, Substituted by VICENTE ILUSTRE, Defendant.

*Second Amended Answer and Cross-Complaint.*

Come now the defendants in the above entitled action by their Attorneys, Gibbs, Gale & Carr, and answering plaintiff's complaint deny each and every allegation therein contained not hereinbefore specifically admitted.

#### Par. I.

By leave of Court first had and obtained, and in order to conform to the proofs adduced, plaintiff by way of this its second amended answer further answering said complaint, alleges:

That on the 14th day of November, 1903, the Court of First Instance of the City of Manila, Hon. John C. Sweeney, presiding

ivil case No. 2230, by judgment and order duly entered and made, adjudged and declared the defendant Francisco Martinez a prodigal and incompetent, and on the 19th of the same month appointed

42 Charles C. Cohn as guardian of his person and estate; thereafter, to-wit: on the 6th day of January, 1906, the said Court of First Instance, Hon. A. S. Crossfield presiding, appointed co-defendant Vicente Ilustre as such guardian in substitution of said Charles C. Cohn, resigned.

### Par. II.

Defendants admit that on the 15th day of June, 1903, the defendant Francisco Martinez signed the document in favor of the plaintiff mentioned in Par. 2 of the complaint, a copy of which is attached thereto and marked Exhibit "A," but defendants allege that the said Francisco Martinez was wholly ignorant of the true contents of such instrument, which were not disclosed to him and that at the time of signing said instrument and for a long time prior thereto, the said Francisco Martinez had been was and now is, by reason of old age, disease and mental and physical infirmity mentally incapacitated and wholly incompetent to administer his business affairs or to care for himself or to comprehend the significance, object and effect of said instrument or of any other writings or documents signed by him, and by reason thereof and on account of the facts hereinafter set forth the said instrument is not binding upon the said Francisco Martinez nor upon his estate, except in so far as his guardian may see fit to avail himself of its provisions.

### Par. III.

During all the times hereinafter mentioned, Robert Wemyss Brown, was the duly appointed, authorized and acting agent, manager and representative of the plaintiff corporation, in which capacity all of his acts hereinafter set forth were performed and during said times Ricardo Regidor and Vicente G. Azaola were the duly employed agents and attorneys of said Robert Wemyss Brown, acting as such agent and manager.

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### Par. IV.

That on or about the 1st day of January, 1903, the said named Robert Wemyss Brown, Ricardo Regidor, Vicente G. Azaola and various other persons in their employ, with full knowledge of the mental incapacity and incompetency of the said Francisco Martinez entered into and formed a conspiracy for the purpose and with the intent and object of cheating and defrauding him of his property as hereinafter set forth.

### Par. V.

That in pursuance of said conspiracy, the said Robert Wemyss Brown, Ricardo Regidor, Vicente G. Azaola and their said agents and employees entered into an agreement and combination with certain gamblers and other persons of the City of Manila, whereby the latter were to engage the said Francisco Martinez in games of chance

prohibited by law and to secure from him promissory notes and other obligations for the sums lost by him in such games, and whereby said agents, employees and gamblers were to secure from the holders thereof other worthless and void promissory notes and obligations executed by the said Francisco Martinez for gambling debts previous to said conspiracy, which said promissory notes and obligations were to be acquired by said Brown, Regidor, Azaola and their said agents for an insignificant portion of their face value and to be charged against said Francisco Martinez at their full face value in his accounts with the plaintiff corporation.

#### Par. VI.

That in conformity with such agreement and combination the said gamblers did lure and inveigle said Francisco Martinez into playing and engaging in games of chance prohibited by law and did thereby cheat and swindle him out of large sums of money and did secure from him in payment of said sums promissory  
44 notes and obligations aggregating together with the promissory notes and obligations previously executed by him for gambling debts arising from games prohibited by law and in which the said Martinez had been cheated and swindled, more than two hundred thousand pesos, a *parge* portion of which said notes and obligations were acquired by the said Brown for the plaintiff corporation for an insignificant portion of their face value, and were by him charged upon the books of plaintiff to the account of said Martinez at their full face value for the purpose of consuming the ostensible credit on the books of plaintiff's Bank in favor of said Martinez opened as hereinafter set forth.

#### Par. VII.

That pursuant to said conspiracy and for the purpose of further facilitating the cheating and defrauding of said Francisco Martinez, the said Brown opened an account current with the Bank of plaintiff corporation in favor of said Martinez, in an ostensible amount of thirty thousand pesos, which was subsequently and for the same ulterior motive increased to eighty thousand pesos, as is more specifically shown hereinafter, against which account the said Martinez drew various checks in favor of various persons in payment of gambling debts and other alleged obligations; that when such checks were presented to plaintiff's Bank payment was refused and the holders thereof were required by the said Brown to and did consult with and secure the approval of said Regidor, whereupon such checks were paid by plaintiff corporation upon the condition that the holders pay a discount or commission of from 25% to 50% of the face value of such checks; that such checks were then charged to the current account of said Martinez at their full face value for the purpose of consuming said ostensible credit of eighty thousand pesos.

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#### Par. VIII.

That pursuant to said conspiracy, the said Brown and Regidor, taking advantage of the ignorance and mental incapacity and of



the undue influence which they exercised over him by deceit, misrepresentations, intimidations, duress and threats induced and forced the said Francisco Martinez to sign and deliver to them various checks aggregating a large sum in payment for certain of the gambling obligations acquired by them as hereinafter stated, and which checks so signed and delivered were charged against the account of said Martinez in plaintiff's Bank to consume said ostensible credit of eighty thousand pesos.

Par. IX.

That on the 23rd day of January, 1903, the defendant Francisco Martinez signed and delivered to plaintiff, for the purpose of opening the current account as hereinbefore stated, his promissory note for thirty thousand pesos; that thereafter on the 2nd day of February, 1903, the said Francisco Martinez without consideration of any nature was, by fraud, deceit, misrepresentations, threats and duress and on account of his mental incapacity, induced and forced by the said Brown, Regidor and Azaola, to signed and deliver to the plaintiff corporation another promissory note for thirty thousand pesos, said named persons falsely representing to said Martinez that the new note was for the purpose of cancelling the note of January 23rd, 1903, that notwithstanding the giving of said second note of thirty thousand pesos, the plaintiff corporation fraudulently retained said note of January 23rd, 1903, uncanceled, with the intention of collecting the full face value of both of said notes; that thereafter on said 2nd day of February, 1903, said Brown, Regidor and Azaola, by the said fraudulent means, induced and  
46 forced the said Martinez to sign and deliver another promissory note of eighty thousand pesos, for the purpose of increasing his credit in account current including said original so called credit of thirty thousand pesos to the sum of P80,000.00 without giving said Martinez credit for the two notes of thirty thousand pesos each heretofore mentioned; that afterwards on May 2nd, 1903, by the same fraudulent means, said Francisco Martinez was induced and forced by the said Brown, Regidor and Azaola to sign the instrument of sale with right to repurchase of the steamers "Don Francisco" and "Germana" to secure the fictitious obligation created by said promissory note of thirty thousand pesos of February 2nd, 1903, and which instrument forms the basis of plaintiff's demand against said Martinez in case No. 3363, now pending in this Court, and being tried in conjunction with the case at bar; that thereafter on the 15th day of June, 1903, by the illegal and fraudulent means aforesaid, the said Martinez was, by said Brown, Regidor and Azaola, induced and forced to and did sign the instrument of that date attached to plaintiff's complaint as Exhibit "A"; that the alleged obligation of P110,000.00, mentioned in said last named instrument is made up of said notes of P30,000.00 and P80,000.00 dated February 2nd, 1903; that the separate loan of P30,000.00 mentioned in said instrument of June 15th, 1903, is the same fictitious obligation represented by said promissory note of February 2nd, 1903, and by said instrument of May 2nd, 1903; that after triplicating said fictitious obligation of P30,000.00 as aforesaid, the plaintiff cor-



poration still retained said three promissory notes of January 23rd, 1903, and February 2nd, 1903, uncanceled until about the month of February, 1904, when the same were turned over and delivered by said Brown to his co-conspirator Regidor, for safekeeping, pending certain investigations into the frauds perpetrated by said conspirators then being conducted by the Prosecuting Attorney of the City of Manila—it being the intention of said conspirators to fraudulently collect from said Martinez the fictitious obligations represented by the said three promissory notes and the same fictitious obligation represented by the said instruments of May 2nd, 1903, and June 16th, 1903.

#### Par. X.

That on the 13th day of February, 1903, the said Francisco Martinez signed and delivered to said Brown, Regidor and Azaola his check for \$9,000.00 drawn of his current account with plaintiff's bank in favor of Gregorio Legaspi or bearer, for the purpose of paying an obligation of that amount due said Legaspi and secured by *pacto de retro* on certain real estate; that said check was charged against said account in plaintiff's Bank and was used to consume said ostensible credit of P80,000.00 hereinbefore mentioned; that notwithstanding such payment and charge, the said Brown, Regidor and Azaola by the illegal means heretofore shown included as a separate item of alleged indebtedness in plaintiff's Exhibit "A" the payment of said attempting to force the said Martinez to pay said obligation twice.

#### Par. XI.

That on the 21st day of June, 1903, by the same illegal means heretofore set forth, the said Francisco Martinez was, by the illegal means hereinbefore stated, induced and forced by said Brown and Regidor and their said employees to sign and deliver to them a check on his current account for the sum of P30,000.00 without any consideration whatever, which check was charged against his current account, with the fraudulent intent of fictitiously increasing his alleged indebtedness therein the excess of which over said ostensible credit of P80,000.00 was to be and was included in a subsequent instrument executed on 12th day of February, 1904, as hereinafter set forth.

#### Par. XII.

That pursuant to the conspiracy hereinbefore set forth and in furtherance of its object to deceive and defraud said Francisco Martinez, the said conspirators, Brown, Regidor, Azaola and their said employees and agents by blandishments, deceits and misrepresentations and by duress, threats and intimidation made and uttered to said Martinez and exercised over him between the dates of about January 1st, 1903, and January 1st, 1905, and because of the mental and physical weakness, incapacity and incompetency of their said victim, obtained and effected complete ascendancy over the mind of said Martinez to such extent as to deprive the said Martinez of all power of independent action; that said conspirators

continued and have exercised such ascendancy and undue influence over said Martinez during all of said mentioned time, and during said time, by such deceit, duress, intimidation and threats and by the exercise of such ascendancy and undue influence and because of the mental incapacity and incompetency induced and forced said Martinez to sign and deliver to them large numbers of checks, promissory notes, deeds, mortgages, contracts of pledge and other contracts, agreements and obligations including all those which are the basis of plaintiff's complaint, which said instruments were so signed and delivered without consideration and without benefit whatever to said Martinez.

#### Par. XIII.

That pursuant to said conspiracy, and for the purpose of furthering its object of deceiving and defrauding said Martinez, the said named conspirators by the use of fraud, deceit, duress,  
49 intimidation and threats induced and forced the said Martinez to sign, amongst other documents hereinbefore mentioned, the instrument set out as Exhibit "A" of plaintiff's complaint; that the signing of said Exhibit "A" was entirely without consideration or benefit whatever to *sign* Martinez—the alleged indebtedness recited in said instrument as due from said Martinez to plaintiff being wholly fraudulent and fictitious.

#### Par. XIV.

That on the 12th day of February, 1904, and subsequent to said judgment and order of this Honorable Court adjudging and declaring the said Martinez a prodigal and incompetent person, by employing the same illegal means hereinbefore recited, the said Brown, Regidor, Azaola and their said employees and agents induced and forced the said Martinez to sign the instrument, a duplicate of which is hereto attached marked Exhibit "A" and made a part of this answer, purporting to comply with the conditions to be performed on the part of the said Martinez under said instrument of June 15th, 1903, set out as Exhibit "A" to plaintiff's complaint, fraudulently increasing therein the alleged indebtedness recited in plaintiff's said Exhibit "A" by including therein other false and fictitious obligations, providing among other things, that there should be charged to the current account of said Martinez with said Bank all of the obligations contracted by him subsequent to the date of said instrument (plaintiff's Exhibit "A") the 15th day of June, 1903, with the intention of increasing the fixed amount mentioned in said new instrument by adding thereto the face value of the check of P30,000.00 of June 21st, 1903, thereinbefore mentioned and also by adding thereto the face value of a large number of promissory notes signed by said Martinez, secured from him by the fraudulent means hereinbefore mentioned and which were then and  
50 there in the possession of the Bank, but which were afterward delivered by said Brown to said Regidor to be secreted during the criminal proceedings which had been instituted in the Office of the Prosecuting Attorney against them on account of said frauds.

## Par. XV.

That after the signing of said instrument of the 12th of February, 1904, the said Brown, Regidor and Azaola, and their said agents and employees, fraudulently attempting to falsify said instrument by antedating same to a time previous to the judicial declaration of prodigality and incompetency of said Martinez, for the purpose of avoiding the legal effect of such judgment and prodigality and incompetency.

## Par. XVI.

That if during the transactions herein related there were any sums of money actually delivered to said Martinez or paid out for his benefit by said conspirators, such sums were so delivered and paid by said conspirators for the sole and only object of retaining and strengthening their influence and ascendancy over said Martinez and to enable them to accomplish their criminal conspiracy to defraud him of all his property, for which reasons the said Martinez is not obligated to return or repay any of the sums which may have been so delivered and paid out by the said plaintiff.

## Par. XVII.

That notwithstanding the fraud, duress and undue influence used and exercised by the said Brown and his co-conspirators in securing the signing by Martinez of said contract of June 15th, 1903, mentioned in plaintiff's complaint, the defendants allege that they have never refused to comply with the provisions of said contract requiring the transfer to plaintiff of sufficient of the properties  
51      therein described which at the prices therein specified would extinguish any valid and legal indebtedness which might be found to exist again- the said Martinez in favor of the plaintiff, and that even if, as alleged in plaintiff's complaint, the defendants have failed to make the monthly payments of P4,000.00 as provided in said instrument of June 15th, 1903, such failure could have only created an obligation to transfer sufficient properties mentioned therein, at the prices stipulated, to cancel any indebtedness which might be due the plaintiff, for the execution of which transfers the plaintiff has never *been* made demand upon the defendants, except as shown by said instruments of February 12th, 1904, which the defendant Martinez was fraudulently induced and forced to sign as aforesaid, but, on the contrary, plaintiff has insisted upon enforcing said contract as erroneously interpreted by it in its complaint herein, that is to say,—as a lien upon all the property mentioned therein, and has wrongfully and illegally taken possession of and administered for its own use and benefit a large part of said property. That for the foregoing reasons the only action, if any there be, which could accrue to plaintiff under said contract is a personal action against the defendant for the specific performance thereof which performance has never been refused by the defendants and which said personal action could create no lien upon or against the properties of the defendant Martinez.

## Par. XVIII.

That by reason of the signing and delivery of said instrument of June 15th, 1903, and of the other facts herein pleaded all the instruments previously signed and delivered to plaintiff attempting to encumber and transfer the properties of the defendant Martinez which instruments consist in part of 16 separate deeds with right of repurchase for the specific properties mentioned in the instrument of June 15th, and which were inscribed in the Registry of Property for the City of Manila, were cancelled and became and are null, void and — no effect as is also said instrument of February 12th, 1904, made and signed after the judgment of this Court declaring the said Martinez a prodigal and incompetent.

## Par. XIX.

Further answering plaintiff's complaint and by way of cross-complaint and counterclaim, the defendant- allege:

(a.) All of the facts stated and set forth in the foregoing answer to which reference is specially made and which are made a part of this cross-complaint and counterclaim.

(b.) That on or about the 24th day of November, 1903, and subsequent to the judicial determination of the incompetency of Francisco Martinez as alleged in Par. I hereof, the plaintiff corporation acting wrongfully and illegally and without right or color of right took possession of a large portion of the properties of the defendant Martinez and have ever since to the present day administered said properties and collected the rents and incomes therefrom aggregating a large sum, the exact amount of which is unknown to the defendants, and which said rents and incomes the plaintiff corporation has appropriated to its own use and benefit and has failed, neglected and refused and still fails, neglects and refuses to account to defendants therefor though often requested so to do, by reason of which the plaintiff is indebted to the defendant Vicente Ilustre, as guardian, in a large amount — can only — determined by an accounting.

Wherefore defendants pray judgment:

1. That plaintiff take nothing by this its action against the defendants;
2. That the plaintiff has no right, title or interest in and to the real properties and vessel mentioned in plaintiff's complaint;
3. That the alleged transfers and encumbrances of said real properties and vessel in favor of plaintiff together with their registration in the Registry of Property and in the Custom House be cancelled and annulled;
4. That the plaintiff render unto the defendant an accounting of all monies had and received by it for and on account of the administration of said real property and vessel and pay the same to defendants;
5. That plaintiff pay the costs of this suit, and

6. For such other and further relief as justice and equity may require.

Manila, March 15th, 1906.

GIBBS, GALE & CARR,  
*Attorneys for Defendants.*

Received copy, this 15th of March, 1906.

ARTHUR F. ODLIN,  
*Attorneys for Plaintiff.*

Presented and filed 15th of March, 1906.

Know all men by these presents, that I, Don Francisco Martinez y Garcia, of age, married and proprietor, cause to appear, that in consideration of that which has been ordered by the Third Sale of the Court of First Instance of Manila, on the 15th of June, 1903, approving the agreement of partial partition by me presented of the property of my deceased wife, Dona Germana Ilustre, between my son, Don Pedro Martinez y Ilustre, with the intervention of the International Banking Corporation, by which decree the undersigned was ordered to formalize and execute the documents which shall be necessary for the transfer of the title and the division of the property referred to in the said partition; that in consideration also of that which was stipulated and agreed by me with the International Banking Corporation in the public instrument of the same date and in compliance with that required by the Court in its order already mentioned, and in order to guarantee the payment of 174,000 pesos which the latter has paid to me.

By virtue of the present I cede, sell and transfer to the said International Banking Corporation, and in its name and representation to the agent of the same, Don Robert Wenys Brown, of this neighborhood, of age, married and merchant, the properties comprise in statement number two of the agreement for partition approved as aforesaid, for the price of their respective values, the descriptions of which are as follows:

City property consisting of a house of strong materials with tiled roof and warehouse connected therewith of concrete with a roof also of tile, and the lot upon which the house and warehouse are; said lot has an area of 576 square meters and 10 centimeters, of which area the house occupies 450 square meters and the

55 warehouse 90 square meters and .24 centimeters. It is situated on Calle Barcelona at the corner of Jaboneros in the Barrio of Binondo in the northern district of the Registry of property: bounded on the front, east side, by said Calle Barcelona; on the right of its entrance, south side, by the warehouse of Don Alla Boyle; on the left, north side, by Calle Jaboneros, and on the rear, west side, by the warehouse of Senor Emchen, the property being formerly Number 53 according to the municipal numbering on the Calle Jaboneros side, and No. 17 on the Calle Barcelona

side, and at present numbered 31 to 44, figuring in statement Number 2 as Nos. 31 to 36.

The said property was acquired by Don Francisco Martinez by purchase of Donna Ines Custodio y Castro, for the sum of 13,000 pesos, free of all liens and incumbrances as appears from the instrument executed in this capital on the 16th of August, 1894.

The title was registered in the Registry of Property at folio 124 of volume 10 of the Section of Binondo, and No. 30 of the Archives, second registration, property No. 502. The price of this sale is 28,000 pesos Mex., mutually agreed upon as the valuation in the agreement of partition.

Number 2. Another piece of said property consisting of a house of strong materials with two doors opening on Elcano Street, numbered 251 and 253, of the Barrio of Binondo, Northern District of the Registry of Property. Bounded on the right entering by apartment house No. 65 of Senor Asuncion Ventura Hocorma, represented by Donna Maria del Rosario; on the left by House No. 71 of the heirs of Don Luciano Romero, whose names are Donna Potenciana, wife of Don Julio Margarejo, Donna Isabel, Don

56 Ventura, represented in this city by Don Vicente Blasa, administrator of properties, and on the rear by Caballeros Street. The dimensions of the lot are 8.14 meters wide by 33.43 meters deep, giving a superficial area of 262.12 square meters.

This sale is made for the sum of 5,000 pesos Mex., according to the valuation of the parties interested in the partition.

Number Three. Another city property consisting of a house of strong materials and the lot on which the same is constructed numbered formerly 26, and at the present, 98 to 100 situated on Principe Street, Barrio of San Nicolas of the District of Binondo of this city in the northern district of the Registry of Property. Bounded on the right entering by the house and lot on the same street No. 24 of the property of Don Ponciano Reyes; on the left of the house and lot No. 128 of the same street belonging to Don Antonio Baza, and on the rear by the interior lot of Don Flaviano Abreu.

The lot above described measures 7.90 meters on the front; on the right side of this entrance, which is a broken line composing three straight lines the first measure from the front of 2.78 meters, second, 5.60 meters, and the third, 5.8 meters; on the left side of this entrance a straight line of 11.31 meters, and on the rear another straight line of 13.10 meters, giving the entire lot a superficial area of 105.93 square meters. This property is registered in the northern district of the Registry of Property at Folio 1 of book 3 of the provisional record of the Section of Binondo, Ayuntamiento, Manila, property No. 565.

The price of this sale is 6,000 pesos Mex., at which it has been valued by the parties interested in the partition.

57 Number Four. A building lot numbered 113 to 117 fronting on Calle Barcelona, Barrio of Binondo, and which lot is occupied by a house covering its entire surface and having six doors with another on the interior, and being numbered at the present time 135 to 149, bounded on the right side of its entrance by

house No. 3 of said street; on the left side by house No. 7 of Donna Juliana Dina, and on the rear by house No. 12 which fronts on Calle Sevilla, the property of Juan Zalazar. It measures on the front 25.72 meters; on the right side, 18 meters; on the left which is a broken line composed of five straight lines, the first measuring 11 meters from the front, the second, 3.43 meters, the third, 3.40, the fourth 3.45, the fifth 34.54, and on the rear also by a broken line, the first running from the right side 4.38 meters, the second, 8.40 meters, the third which forms toward the outside of the lot and obtuse angle with the second straight line, 17.75 meters; the fourth, 70 centimeters and forms an obtuse angle with the third towards the interior of the lot, and the fifth 9.85 meters, forms an obtuse angle towards the outside of the lot with the fourth side measurement giving a total superficial area of 566.28 square meters. The lot is registered at folio 231 of the Registry of Property, Volume 9 of the Section of Binondo, and 27 of Archives, property No. 466, second registration, the improvements not having been registered. The price of this sale is the valuation agreed upon by the parties interested in the partition, to wit, 20,000 pesos, Mex.

Number Five. A house and lot situated in Calle Peñarubia numbered 14 to 22 according to the municipal numbering. There is no data nor title referring to this property at hand, for which reason it is not possible to describe it. All that appears is that  
58 it was valued by the parties interested in the sum of P16,000.00 Mex., for which amount this sale is made.

Number Six. Another house with its lot constructed between Sevilla and San Nicolas, Streets (District of the same name, San Nicolas) and designated by numbers 80, 82, 86 and 88, bounded on the front by said Sevilla Street, on the right by the properties of Don Enrique Rodriguez; on the left by Calle San Nicolas, and on the rear by properties of Dona Ponciana Pascual. It measures on the front 11.19 meters; on the rear, 14.13 meters; on the right, 11.02 meters; on the left an obtuse angle beginning at Calle Sevilla and running toward San Nicolas of 4.50 meters, and on the said San Nicolas Street 7.70 meters. By verbal information from a Registry of Property, it is understood that this property is not registered, it being therefore unknown whether the property is unencumbered, the vendor nevertheless giving his assurance that it is free of all incumbrances. On this hypothesis the price of this sale is fixed at P6,000.00 Mex., according to its valuation and the agreement of partition.

Number Seven. Another house of strong materials with its lot designated formerly as No. 43 and at the present time by Nos. 141-145 and 24. It fronts on Calle Sevilla, Barrio of Binondo of the northern registration district, bounded on the right of its entrance by Calle Penarubia; on the left by the lot of Dona Tomasa Ramirez, number of which does not appear, being No. 41 of the property of Don Agustin de los Reyes; and on the rear by Lot No. 27 of Don Juan Antonio, which fronts on the said Calle Penarubia. The lot which is occupied by the building has an extension on the front of 9.60 meters; on the right of it, 12.50 meters; on the left,



14.60 meters, and on the rear of 11 meters, giving a superficial area of 160.16 square meters, there existing at the union of the two said streets an obtuse angle of 4.55 meters in length.

The said property was acquired by Don Francisco Martinez by purchase, free of all liens and incumbrances, of Dona Justa Marques y Rea for the sum of P2800.00, as appears from the documents which both parties executed on the 16th of August, 1890, before the Notary Public, Don Calixto Reyes y Cruz.

The lot of property was registered at folio 139, volume 9, Section of Binondo and 27 of Archives, property No. 456, the value of this property, according to the agreement partition is P5,000.00 Mex., for which sum this sale is made.

Number Eight. Another house with its lot situated on Calle de Lavezares, Barrio of San Nicolas, District of Binondo, designated by Nos. 68 to 76, joined to other properties of Calles Barcelona and Sevilla, also belonging to Don Francisco Martinez, who gives his assurance that this property is free of all liens and incumbrances. It has been valued at 16,000 Pesos Mex., for which sum this sale is made.

Number Nine. Two houses with lot upon which they are constructed on Calle de Lara Distrito in the District of San Nicolas, designated by Nos. 97 and 99 respectively, bounded on the front by said Calle de Lara, on the right entering by the properties of Don Isabelo de los Reyes; on the left by those of Don Julio Marcelo, the boundary of the area not appearing from the document which we have at hand. The lines upon which the said houses are constructed measures on the front 31.57 meters; on the right, 22.83 meters; on the left a broken line formed by two straight lines, one of 10.16 meters, another of 12.04 meters, and the perpendicular which unites both, of 1.14 meters, and on the rear 19.70 meters. This data appears in a plan, the only document which we have at

hand, prepared by the carpenter, Don Arcadio Arellano, on the 12th of July, 1902, the price for which this sale is made is 12,000 pesos, Mex., according to the valuation made by the parties interested in the partition.

Number 10. Another house of strong materials composed of a lower and principal floor, constructed upon a lot of property of vendor, designated by Nos. 79 to 83, which fronts on Calle Barcelona of the Barrio of Binondo, in the northern district of the Registration of Property, bounded on the north, that is, on the right entering, by the house and lot No. 25 of Don Genaro Tecson y Flora; on the south, that is on the left, by the double house No. 21, belonging to Dona Candelaria Alonso; and on the west, that is, on the rear, by the small unnumbered house of Dona Gregoria Mendoza, widow of Don Leocadio Victorino. The lot has the form of an irregular polygon of six unequal sides, which measures 14.35 meters along its facade line; 22.30 meters in depth from the right side of the entrance; 17.80 meters on its left side, and on the rear, which forms a broken line of three sides, the first of 5.10 meters; second of 4.08 meters, and the third, which closes the space, 9.10 meters, which measurements aggregate a total superficial area of



295.01 meters, and which property is registered in the Registry of the northern district at folio 239 of volume 5 of Archives, Book 7 of the Ayuntamiento, Section of Binondo, No. 352. This property is valued by the parties interested in the sum of 12,000.00 pesos Mex., for which sum this sale is made.

Number 11. Another house with lot upon which it is constructed of strong materials and composed of three doors, situated between Calles Penarubia and Barcelona of the District of San Nicolas, and designated by Nos. 151, 155 and 46. It measures on the front 10.47 meters; on the right, 11.90 meters, on the right it forms an obtuse angle running from Calle Barcelona to Penarubia, 61 the angle of which on Calle Barcelona measures 8.19 meters, and that on Penarubia 4.67 meters, and on the rear 13.56 meters, all of which appears from the plan made by the carpenter Senor Arcadio Arellano of the 22nd of January, 1902, which is the only document which we have at hand. This property is valued by the parties interested in the sum of 6,000.00 pesos Mex., for which amount this sale is made; the vendor warranting that said property is free of all liens and incumbrances.

Number 12. Another house with a lot upon which it is constructed situated between Calle Barcelona and Penarubia in the District of San Nicolas, designated by Nos. 157 to 173, and 45 and 47, bounded on the front by said Calle Barcelona, and on the left by said Calle Penarubia. The building measures on the front describing an obtuse angle which runs from Calle Penarubia to Calle Barcelona of 11.57 meters, and by said Calle Barcelona, 25.07 meters; on the right, 14.17 meters; on the left ten meters 106 centimeters, and on the rear a broken line forming two straight lines, one measuring 10 meters, 65 centimeters, and the other 19 meters, and the perpendicular which unites the two measures 3.10 meters.

The data set forth as above has been taken from a plan made by the carpenter Don Arcadio Arellano on the 22nd day of January, 1902.

This property has been valued by the parties interested in the sum of 18,000.00 mex., for which price this sale is made.

Number 13. Another house with its lot situated in Calle Sevilla, designated by numbers 93, 95 and 97, municipal numbering. There are no antecedents nor titles at hand referring to this property.

62 The parties interested in the partition of this property have valued it at 4,000 pesos for which sum this sale is made.

Number 14. Another house of seven doors with a lot upon which it is constructed situated on Calle Sevilla and designated by No. 100 interior.

There are at hand no titles nor other documents which refer to this property, and for this reason its description is omitted and it has been valued in the sum of 3500.00 Pesos Mex., for which amount this sale is made.

Number 15. A screw steamer called "Germana" with machinery of high and low pressure of 32 h. p. and apparatus of "Goleta." It was constructed in the neighboring port of Hong Kong in the year 1897. It was measured by Don Manuel de la Vega, Lieutenant of

Navigation, on the 10th of May, same year, and its dimensions are as follows: length 32.69 meters; width 5.45 meters; depth 2.29 meters, its gross tonnage being 136.39, and net 88.68 tons having been registered provisionally on the 15th of April, 1898.

This ship has been valued by mutual agreement at 35,000 Pesos, for which sum this sale is made.

I also cause to appear that in compliance with that stipulated and agreed upon by the International Banking Corporation in the instrument above referred to of the 15th of June, last, I sell, cede and transfer to the said, The International Banking Corporation all the property which may belong to me in the Province of Batangas and the town of Balayan, for the prices fixed in the partition of them which shall take place with my son, Pedro Martinez y Ilustre, and with whom the said Bank must carry out the same, including in it whatever right, money or share may belong to me.

63 In the same manner I cede, sell and transfer to the said, The International Banking Corporation, the right in usufruct which I have in the third part corresponding to the property adjudicated to my son.

It is also caused to appear that this sale is subject to the condition that if I, Don Francisco Martinez y Garcia, return to the said, The International Banking Corporation before 12 o'clock P. M., of the 7th of May, 1904, the amount for which this sale is made the International Bank obligates itself to re-sell to me the properties and steamer mentioned; acquiring on the contrary the absolute dominion over said property in an irrevocable manner, becoming the owner thereof in accordance with Articles 1509 and 1518 of the Civil Code, free of all liens and encumbrances and it shall have the right to transfer the same to others.

It is also caused to appear that the Bank obligates itself to accept for the effects of the right of repurchase, the sum of 4,000 pesos monthly, payable by me to the vendor in the five first days of each month, the said Banking Corporation obligating itself to extend every six months the period of the right of repurchase in case the said monthly payments agreed upon of 4,000 pesos may be paid by me punctually to satisfy and extinguish the amount of the sales.

It is also caused to appear that if for any reason I, the vendor shall not comply with the payments of the 4,000 pesos monthly and for this reason on the maturity of the six months, the right of repurchase shall be held to have expired without the right of extension to which I, the vendor, would otherwise be entitled the Bank shall return to me on the consummation of the sale, the partial amounts received.

64 In the same manner it is caused to appear that the International Banking Corporation shall place at the disposition of the vendor, Don Francisco Martinez y Garcia, in account current, the excess of the sales mentioned, as soon as the titles of the property may be delivered and duly registered, and not before.

It is also caused to appear that it is stipulated and agreed with the said Agent of the International Banking Corporation in the representation which he carried that the said Bank is the owner of the

property sold, free of all charges and liens, the possession of which I give in this act by virtue of the execution of the present escritura.

I also cause to appear that I, the vendor, am responsible to the International Banking Corporation for the property, the title of which I obligate myself to defend now and forever against the just claims by whomsoever presented.

I also cause to appear that the Bank as purchaser, acquires by this contract the right to cede, sell or transfer the same to any natural or juridical persons which may be subrogated in its place and to the right for which purpose from this time on I give my express consent.

I also cause to appear that I, the vendor, Don Francisco Martinez y Garcia, for all the obligations pending contracted by me subsequent to the 15th of June of last year and which may be in the possession of the International Banking Corporation on this day, shall be charged to my current account in said Bank by virtue of this instrument.

By virtue of the present instrument I also cause to appear, without prejudice to all that which is heretofore set forth the Bank obligates itself to proceed to the immediate liquidation of all the subsequent obligations of the said Francisco Martinez in its favor in order to fix its exact balance for which he may be in debt at this time.

65 Finally, it is caused to appear that the expenses of the present escritura and those which may be occasioned by reason of it for the transfer of the properties sold, as well as for their inscription in the Registry of Property and the Custom House and Captain of the Port, shall be charged personally to Don Francisco Martinez y Garcia and shall be debited by the Bank in the account current of the latter.

Whereas that which is hereinbefore set forth has been agreed upon with Robert W. Brown, of this neighborhood, of age, married and a merchant, in his capacity as Agent and Director in Manila of the International Banking Corporation, as appears from the corresponding power of attorney executed by Don William L. Moyer and James H. Rodgers, President and Secretary, respectively of said Banking Corporation, domiciled in the City of New York on the 14th of March of the present year, said Agent in the representation which he has, manifests in this act his acceptance to that set forth and both the contracting parties after having carefully read this instrument, ratify the same and its contents and sign in Manila, the 12th of February, 1904.

(Signed)

(Signed)

FRANCISCO MARTINEZ,  
R. W. BROWN.

In the presence of:

(Signed) RAMON LONTOC.

(Signed) JULIO DUENAS.

UNITED STATES OF AMERICA.

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila, 12th of February, 1904, before me personally appeared Don Francisco Martinez y Garcia, without certificate of registration on account of assuring me he is exempt from payment of same by reason of his age and Don Robert W. Brown, with his No. 163141, issued on the 13th of May, 1903, by the City Assessor & Collector, in the City of Manila, and I certify that said persons as the persons who executed the documents above set forth which they affirm and ratify, assuring me that the same is their free and voluntary act and deed.

In testimony whereof I have placed my name at the foot of this certificate and affix my official seal, the day, month and year above mentioned.

Before me,

(Signed)

MANUEL TORRES,

*Notary Public.*

My appointment expires Jan. 1, 1905.

UNITED STATES OF AMERICA,

*Philippine Islands:*

In the Court of First Instance of the City of Manila, Part III.

No. 3365.

THE INTERNATIONAL BANKING CORPORATION

vs.

FRANCISCO MARTINEZ et al.

*Judgment.*

This case is on for hearing upon the pleadings, exhibits and proof. The Court finds that on the 14th day of November, 1903, the Court of First Instance of the City of Manila, adjudged and decreed the defendant, Francisco Martinez to be mentally and physically incompetent to care for himself, personally, or for his property.

It further appears to the Court that said Francisco Martinez, up to about the middle of the year 1902, had, by hard work and close attention to business, accumulated an estate of the value of approximately one million pesos and was free from debt. Up to this time, although about 65 years of age, he had never gambled. It is a further fact that about this time he was found gambling with one, Isidro Martinez (who was a witness in this case) and others.

The Court finds that in the early part of the year 1903, a combination was formed by R. W. Brown, Ricardo Regidor and others to defraud this old, demented man, Martinez, out of his estate and said R. W. Brown knew that the plaintiff bank, of which he was the manager, could influence and aid in his fraudulent purpose, so early in the year 1903 Isidro Martinez appeared at the International Banking Corporation with the old man, Francisco

85

Martinez, to negotiate a loan for the latter of 30,000 pesos. The matter was finally referred to Regidor and the loan was arranged, for which Francisco Martinez paid to said Isidro Martinez the sum of 3,000 pesos. Soon thereafter a power of attorney was executed in the office of Ricardo Regidor by defendant, Francisco Martinez, to one, Pedro Cantero, authorizing Cantero to take charge of his, Martinez's business, although Cantero was a stranger for the old man, Martinez; the date of the execution of this power of attorney, according to Cantero, being the first time he had met Martinez.

At this time and during these days, Ricardo Regidor's office was a regular hive of sharks, including R. W. Brown, planning to rob the defendant, Martinez, of his property. Nearly every day he was signing promissory notes and checks and other documents, the purport and purpose of which he, Martinez, knew nothing. He was nothing but a child and Brown and his emissaries will knew this. No check of Martinez could be cashed without being first presented to Brown at the Bank and if it did not have the OK of Regidor thereon, the holder was told by Brown that he must first have the OK of Regidor.

There could not be any stringer evidence that Francisco Martinez was demented than that he would execute a power of attorney to

69      Pedro Cantero, a stranger, and who, but for his bistly moustache, is boyish in appearance, small physically and mentally, and who from his conduct in connection with this old man under the direction of Brown and Regidor, as testified to by him, and his appearance on and off the witness stand, I judge never had an honest impulse. The proof shows that defendant Martinez, lived here in the city of Manila where the greater portion of his property is located and he had nothing else to do but to look after his business matters. It is not a natural business transaction that a man of his wealth, industry and attentiveness to business which accumulated his fortune, would execute a power of attorney to anyone, and more especially to an individual he knew nothing whatever about and of the appearance of Cantero.

The Court holds:

(1.) That the document, Plaintiff's Exhibit "A" is not a mortgage. It is a contract by which the defendant, Martinez obligates himself to convey his interest in the Martinez-Ilustre estate to the plaintiff, the International Banking Corporation, upon the partition of said estate. If defendant, Martinez had been capable of executing this contract, upon the partition of the property, the plaintiff Bank on application and Martinez's refusal to comply with the terms of this contract, Exhibit "A", would have had its remedy in a court of equity to enforce a specific performance of the contract, but this document cannot be construed as a mortgage. It further provides that the property in partition is to be taken by the plaintiff Bank at the appraised value and upon the execution of the title papers for the same to the Bank, plaintiff obligated itself to pay to Martinez the difference between the debt and the value of the property. Said

70      document further recites that the plaintiff Bank holds the promissory notes of said Martinez for the amount set out in the contract. Mr. Taylor, who was introduced as a witness

for the plaintiff and who testified solely from the books of the plaintiff, he not having any personal knowledge of the Martinez transaction, having arrived here and gone into the service of the plaintiff Bank after these transactions were had, testifies that the course of business in that Bank and in banking was, upon the payment of notes to surrender the notes. None of these notes were introduced in evidence by the plaintiff Bank and the proof shows that none of said notes were in the possession of plaintiff Bank.

(2.) That Exhibit "A" of the plaintiff, and all the business transactions of the plaintiff had with Martinez with reference to the matters involved in this case were procured by R. W. Brown, manager of the plaintiff, through fraud and with full knowledge of the fact that Martinez was not mentally capable of transacting business.

(3.) That the said contracts cannot — enforced for the reason that Martinez was, at the time of the execution of the same, an imbecile and Brown, who was the representative of the Bank and procured the execution of the same, was bound to know, and beyond any doubt did know that Martinez was an imbecile.

(4.) The Court holds that the defendant's cross-complaint is fully sustained by the facts and therefore, the plaintiff is not entitled to recover in this case. It is, therefore,

Ordered, Adjudged and Decreed by the Court that plaintiff's suit be dismissed and that the defendant, Vicente Ilustre, as guardian of Francisco Martinez, recover of plaintiff, the International Banking Corporation, the costs of this suit, for which it is specially ordered that execution issue.

71 It further appears to the Court that by virtue of Exhibit "A", the plaintiff Bank assumed the right to take charge of six pieces of real estate belonging to defendant, Francisco Martinez, which property is described in the pleadings, since which time plaintiff has been collecting the rents.

The Court finds from the proof that plaintiff took charge of this property after Martinez was declared to be an incompetent by decree of the Court of First Instance of November 14, 1903, but this is immaterial. The plaintiff had no authority to take charge of the property under the provisions of Exhibit "A" and while the proof shows that plaintiff expended considerable money in repairs, it is insisted by plaintiff that in any event it is entitled to a credit on the gross amount for the repairs.

The Court is of the opinion that plaintiff was a trespasser in taking charge of said property and that it is not entitled to retain the amount of such repairs.

The Court finds that the gross amount of said rents collected is the sum of P29,281.93, and that the defendant, Vicente Ilustre, as guardian of Francisco Martinez, is entitled to recover said sum. It is, therefore,

Ordered, Adjudged and Decreed by the Court that the defendant, Vicente Ilustre, as guardian of Francisco Martinez, recover of the plaintiff, The International Banking Corporation the said sum of P29,281.92 Philippine Currency, for which it is specially ordered that execution issue.

The proof establishes beyond any question and it is admitted by

defendant's counsel, that the plaintiff, the International Banking corporation, is a financial institution of high standing and that it is now under the management in the City of Manila of men of integrity. The misplaced confidence in R. W. Brown by said Bank has cost it in this transaction, considerable loss, but the Court cannot permit the estate of the defendant's ward to suffer on account of the plaintiff's mistake in the selection of its manager, R. W. Brown.

It is Further Ordered by the Court that the plaintiff, The International Banking Corporation, deliver the possession of said six pieces of real estate mentioned and described in the pleadings which it took possession of as hereinbefore set out, to the defendant, Vicente Ilustre, as guardian of Francisco Martinez, and upon its failure to do so, that writs of possession issue to the Sheriff of the City of Manila to place the defendant, Vicente Ilustre as guardian of Francisco Martinez in possession of the same.

Dated, Manila, P. I., March 29, 1906.

JOHN C. SWEENEY, *Judge.*

73 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

Civil Case No. 3365.

INTER'L BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ and VICENTE ILUSTRE, Defendant.

*Exception to Judgment.*

Now come the attorneys for the plaintiff in the above entitled cause and except to the judgment dictated on the 29th of March, 1906, and state their intention to present a bill of exceptions.

Manila, March 30, 1906.

(Signed) KINNEY, ODLIN & LAWRENCE,  
*Attorneys for Plaintiff.*

Received copy today, March 30, 1906.

GIBBS, GALE & CARR,  
*Attorneys for the Defendants.*



74 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

INTERNATIONAL BANKING CORPORATION, Plaintiff,  
vs.  
FRANCISCO MARTINEZ and VICENTE ILUSTRE, as Duly Appointed  
Guardian, Defendants.

*Motion for New Trial.*

Now comes the plaintiff in the above entitled cause and respectfully requests the Court to set aside the judgment rendered and to grant a new trial, for the following reasons:

1. That the evidence was not sufficient to justify the decision of the court.
2. That the decision is contrary to the law.
3. That the findings of fact are plainly and manifestly against the weight of the evidence.
4. For other errors appearing in the record.

Manila, P. I., March 31, 1906.

(Signed) KINNEY, ODLIN & LAWRENCE,  
*Attorneys for the Plaintiff.*

Received copy today, March 31, 1906.

(Signed) GIBBS, GALE & CARR,  
*Attorneys for the Defendants.*

75 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance for the City of Manila, Part II.

Civil Case No. 3365.

THE INTERNATIONAL BANKING CORPORATION  
vs.  
FRANCISCO MARTINEZ et al.

*Order.*

This case is now before the Court for hearing the plaintiff's motion for a new trial herein.

Hon. Arthur F. Odlin appeared in behalf of the motion; Messrs. Gibbs, Gale and Carr, and Sr. Vicente Ilustre in opposition thereto.

After hearing the parties through their respective attorneys, and examining the record, it appears that this was a case tried before Hon. John C. Sweeney in the Third Chamber of this Court, and



without going into the merits of the evidence offered and the fact found therein, or the conclusions of law arrived at in that Honorable Court, I do not feel that in the absence of the appearance of extraordinary error I should interfere in any way with the judgment entered, as I would have to do if the motion for a new trial was granted.

I therefore deny the motion for a new trial.

Manila, P. I., May 18th, 1906.

(Signed)

A. S. CROSSFIELD, *Judge*.

76 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 3365.

INTERNATIONAL BANKING CORPORATION, Plaintiff,

vs.

FRANCISCO MARTINEZ and VICENTE ILUSTRE, as Guardian, Defendants.

*Exception to Order.*

Now comes the plaintiff corporation in the above entitled cause and excepts to the order of the Honorable A. S. Crossfield, dated May 18, 1906, denying the motion for a new trial, and at the same time prays that it be granted a period of 30 days, to count from to-day, to present a bill of exceptions.

(Signed)

KINNEY, ODLIN & LAWRENCE,

*Attorneys for the Plaintiff Corporation.*

Received copy to-day, May 22, 1906, and we agree to the period requested.

GIBBS, GALE & CARR,

*Attorneys for Defendants.*

Approved:

Manila, May 23, 1906.

(Signed)

A. S. CROSSFIELD, *Judge*.

77 UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance of the City of Manila.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff.

vs.

FRANCISCO MARTINEZ and His Guardian, Defendants.

*Memorandum in Support of Motion for New Trial.*

It is respectfully maintained that this case is most remarkable in that a bank loaning one of its customers something like P170,000

upon security consisting principally of liens upon real estate, after waiting two or more years for payment, finds itself obliged to begin suits, and there result decisions by which not only does the bank lose all of its debt but is directed to pay nearly P30,000 to the defendant.

We respectfully submit that the judgment rendered in this case on the 29th of last March is illegal and not in harmony with the evidence, and that the Court furthermore failed to apply the correct rule of law upon the facts as proven. It seems to us not too much to say that the judgment of the court is full of inconsistencies and errors, which will appear upon a reading of the judgment in connection with a study of the evidence, all of which has been transcribed by the court stenographer, and is herewith submitted to the Honorable Judge whose duty it is to pass upon this motion. We will briefly refer to these various errors.

### I.

It appears by the judgment that the defendant, Francisco Martinez, was placed under guardianship because he was found  
78 to be mentally and physically incompetent to care for himself or his property. In this connection it is observed that the code provides for the appointment of guardians for two classes of persons, namely, those who are mentally incompetent and those who are spendthrifts. An examination of the decision of the court in the guardianship proceedings, all of which are matter of record in this case, shows that it was based upon proof that Francisco Martinez was a spendthrift. The evidence did not show that he was an imbecile. The evidence taken at that time and the evidence taken in the present case show that Francisco Martinez is a Filipino of much more than ordinary intelligence. The evidence shows that he became involved in disputes with his own son, and that he began to gamble and to squander his money so that, if he died, his son should not get it. Complaint being made to the court that he was squandering his money, a guardian was appointed for him. When the learned trial judge declared, as a matter of fact, that Martinez was an imbecile, he disregarded, as it seems to us, the evidence in this case.

### II.

The judgment of the court further states that in the middle of the year 1902 Francisco Martinez was worth about P1,000,000 and was free from debt. This is clearly an error. The proofs in this case show that he owed at least two debts, and that these were paid by the plaintiff at his request. He owed the varadero de Manila something like P30,000, and he owed something like P9000 upon one of his tracts or real estate.

### III.

The court in its judgment finds that in the early part of 1903 a combination was formed by R. W. Brown, Ricardo Regidor, and

others to defraud Martinez out of his estate. If this is true, it does not follow that the plaintiff, the International Banking Corporation, is responsible for this fraudulent and wrongful act on the part of R. W. Brown. Such an act was not within the scope of the duties of Brown as manager of the bank. It was clearly outside of his duties. In spite of all that is said by counsel for the defense in this case, we respectfully submit that an examination of the authorities upon which we rely establishes the fact that the law does not hold a bank liable for the frauds and torts of its cashier or manager unless done directly within the scope of his employment. In support of this proposition, we rely upon the leading case known as the case of *Foster v. The Essex Bank*, 17 Mass. 479, in which the following circumstances appeared: A lot of gold had been placed in the vaults of a bank merely for safe keeping. Soon afterwards a robbery took place, which was planned by the cashier of the bank and one of his clerks. Not only was property belonging to the bank stolen, but also the gold which had been specially deposited. After long study and consideration, the Supreme Court of Massachusetts held unanimously that the bank was not liable.

It is insisted by counsel for the defense in this case that the decision above referred to is not good law, and that it has been overruled. The trial judge evidently so held, although he made no mention in his decision of any case whatever, in spite of the fact that many cases had been cited by counsel on either side of the present controversy. It is claimed by counsel for the defendant that the decision in the case of *Foster v. Essex Bank* was overruled

by the same Supreme Court of Massachusetts in the case of the *Atlantic Bank v. The Merchants' Bank*, reported in 76 Mass. 532. The facts in this case were entirely different from the facts in the former case. We ask Your Honor to read these two cases, and if Your Honor finds the case of *Foster v. The Essex Bank* even mentioned in the latter case, we will then admit that this argument should not be presented to the court. Not only is the Supreme Court of Massachusetts in the later case absolutely silent with regard to the case in 17 Mass., but two of the ablest judges upon the court dissented from the decision rendered in the case found in 76 Mass. Furthermore, the decision of Chief Justice Parker in the case of *Foster v. The Essex Bank* is cited by Morse in Vol. 1 of his *Treatise on the Law of Banks and Banking*, Section 102, found on pages 229-230, as being "elaborate, thorough and luminous." The author further states that this decision stands as a leading authority. How then can it be said, in the face of such facts, that the decision upon which we principally rely should be disregarded?

We therefore insist that, inasmuch as the evidence shows that all the wrongful acts which R. W. Brown and his friends may have committed were without the knowledge of the bank, and that Brown was discharged as soon as the directors knew of his improper conduct, the bank, in the absence of ratification, approval, and adoption, cannot be held bound by anything that he did.

There are many other authorities along the same lines, and we refer particularly to Section 4824 of Thompson on Corporation, Vol. 4, page 3615, where he says that a bank is not liable for the frauds of the cashier when he is acting upon his own private business, even although perpetrated upon innocent persons and although their suspicions may have been lulled in consideration of the fact of his official position. Citing 111th United States Supreme Court Reports, 156. The same writer, at page 3616 of the same book, holds that a bank is not liable for the acts of the cashier which are outside the scope of his own agency, unless it acquiesces therein. And the author himself cites not only the case, above referred to by us, found in 17 Mass., but he also quotes another important case, namely, that of the First National Bank v. Graham, in 79 Pa. State, page 106. We therefore submit that the court erred in denying relief to the bank on account of the fraud of R. W. Brown, and we also call the attention of the Court to the omission by Judge Sweeney to find and to specifically declare in his judgment that Brown's acts of alleged fraud were committed within the scope of his duties? There is not a word in the decision of the court to that effect; and unless the court found that such was the fact, he could not properly declare the bank liable.

## IV.

Another inconsistency in the decision of the court is found at the bottom of page 2 and the top of page 3 of the decision, where the Judge holds that one of the proofs that Martinez was demented consists in his having executed a power of attorney to Pedro Cantero, whose appearance is that of a boy, small physically and mentally, and who, from his appearance on the witness stand and off the witness stand, the court concludes never had an honest impulse; and, at the same time, in spite of this severe denunciation of Pedro Cantero, the judge throughout his decision bases his findings almost entirely upon the evidence of this same witness who, according to the judge himself, never had an honest impulse.

## V.

We do not care to argue at length the legal point that the document upon which this suit is based is not in law a mortgage. This is a technical point which we do not consider it important or necessary to dwell upon. There are provisions in the said document that are not usually found in mortgages, but the fact is undisputed that it did purport to create liens upon the property of Martinez in order to secure the various debts which he owed the plaintiff. Furthermore, even if the trial court had been of the opinion that this instrument could not be passed upon as a mortgage, it certainly was the duty of the court to grant to the plaintiff a general judgment for its claim, based upon the prayer for general relief which is found at the end of the complaint.

## VI.

Another error in the decision of the court is found in the fact that he not only dismissed the complaint of the plaintiff, but that

he requires the said plaintiff to repay to the guardian of Francisco Martinez the sum of P29,281.93 as the gross amount of rents collected by the bank from certain portions of the real estate which was in the possession of the bank, and without allowing credit to the bank for any of the money which was paid for insurance, repairs, and taxes. This is not only grossly unjust, but the evidence itself shows that instead of the gross amount of said rents reaching the sum of P29,281.93, said sum amount- to less than P22,000. This error alone is sufficient to require a new trial, because if the motion for a new trial be denied and the present judgment be allowed to stand, the plaintiff in this case would be bound to pay out money alleged to have been received by it, such allegation being unsupported by any proof whatsoever in the case establishing any such liability.

## VII.

As regards the proposition of counsel for the defense that  
83 there has been a duplication of accounts, and that the bank has collected P30,000 from Martinez twice, the evidence in this case shows that the bank itself stated voluntarily to the court that the item of P30,000, which is the basis of the action in case No. 3363, is identical with the item of P30,000 in the bank account of Martinez referred to during the trial, and the reason why this item was included in case No. 3365 (the present case) was in order to prevent possible loss to the bank in case the security described in the complaint in case No. 3363 should prove insufficient. In other words, Martinez first pledged the steamer Germana to secure said debt of P30,000. He afterwards made a general mortgage to the bank to secure all his indebtedness, and described as such security some sixteen pieces of real estate. He included as secured by this real estate not only his indebtedness to the bank outside of the Germana loan, but also the Germana loan itself. There was therefore no duplication of the indebtedness, but there was a taking of double security, which is not only legal for the bank to do but a very common practice. The record will show that the plaintiff itself asked the court, in case judgment was given for P30,000 in case No. 3363, as should have been done, that the said sum of P30,000 be deducted from the amount of the judgment in case No. 3365.

With the above observations, and with the request that the court will examine the authorities which we have submitted and will also read the testimony in the case, this motion for a new trial is respectfully submitted for decision.

Manila, P. I., April 24, 1906.

(S'g'd) KINNEY, ODLIN & LAWRENCE,  
*Attorney- for the International Banking Corporation.*

84 On July 12, 1908, the record was duly received in the Supreme Court of the Philippine Islands.

On July 27th, 1906, the printed bill of exceptions was received.

On February 28, 1907, appellant's brief was duly received in the

Office of the Clerk of the Supreme Court, to which was attached the following assignment of errors, to-wit:

I. The trial court erred in rendering judgment against the plaintiff.

II. The trial court erred in declining to render a judgment against the defendants.

III. The trial court erred in not finding as a concrete fact that R. W. Brown was not the agent of the plaintiff in certain of his dealings with the defendant Martinez.

IV. The trial court erred in permitting counsel for defendants to cross-examine the witness Pedro Cantero upon matter distinct from the subject-matter of the direct examination.

V. The trial court erred in finding that the defendant Martinez was, at the time of the execution of the document sought to be enforced, an imbecile and incompetent to transact that or any other business.

VI. The trial court erred in directing the plaintiff to deliver to the defendant, Ilustre, as guardian of the defendant Martinez, possession of real estate held by the plaintiff.

VII. The trial court erred in holding that the document sued upon could not be regarded as a mortgage, and that the action commenced by the plaintiff must therefore fail.

VIII. The trial court erred in disallowing the amounts  
85 expended by the plaintiff in connection with the real estate involved in this action, as well as the amount of the indebtedness due from the defendant Martinez to the plaintiff.

IX. The trial court erred in declining to permit plaintiff's counsel to prove admissions made by the defendant Martinez in the presence of his guardian.

X. The trial court erred in finding as a fact that in the middle of the year 1902 Francisco Martinez was worth about one million pesos, *and free from debt*.

XI. The trial court erred in declining to grant a new trial which was duly moved for upon the ground that the findings of fact were plainly and manifestly against the weight of the evidence.

On the second day of November, 1907, the brief of the appellees was duly filed in the Office of the Clerk of the Supreme Court.

On January 21, 1908, the said cause came on for hearing before the Supreme Court, which hearing was continued on the following day, as appears from the minutes of the Court.

On February 29, 1908, the said Supreme Court rendered a decision in the said cause, which decision is in the words and figures following, to-wit:

86 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

WILLARD, J.:

This case and case No. 3471 between the same parties were tried at the same time in the court below, and all the evidence received was made applicable to each case. This case, No. 3472, was brought to recover against the defendants, Francisco Martinez, and his guardian, Vicente Ilustre, a judgment for P159,607.81, with interest at the rate of eight per cent. per annum from the presentation of the complaint on February 25, 1905, and for an order directing the sale of the real property described in the complaint to satisfy the amount of such judgment. Judgment was rendered in the court below denying to the plaintiff any relief, and judgment was given against the plaintiff on the defendant's counterclaim for P29,281.93. From that judgment the plaintiff had appealed.

The answer and counterclaim in this case are substantially the same as the answer and counterclaim in case No. 3471. In the decision in that case which is filed herewith, we have considered and disposed of such defenses, and we hold in this case as we did in the other case, that the evidence is not sufficient to establish any of the defenses or the counterclaim.

87 That the defendant, Martinez, at the time the action was commenced, was indebted to the plaintiff in at least the sum of P159,607.81 was fully established by the evidence. It remains therefore, to consider only the nature of the contract upon which this action was brought. That contract is as follows:

"I, Don Francisco Martinez y Garcia, resident of Manila, Province of Manila, Philippine Islands, of age, married, merchant, to all whom the present may concern, cause to appear:

That whereas I have received and am debtor at the present time to the International Banking Corporation for the amount of different loans or advances which the said bank has made to me, with interest at the rate of 8% per annum to wit: the promissory notes which I have executed on certain dates and which are now in possession of the bank, amounting to the sum of One Hundred and Ten Thousand Pesos; a loan of Thirty Thousand Pesos with guaranty of the steamers "Don Francisco" and "Germana;" the amount of a mortgage existing upon the house in Calle Barcelona, corner of Jaboneros and Elcano, and corner of Caballeros, both in the barrio of Binondo in the sum of Thirteen Thousand Dollars United States Currency which the Bank has paid to the association of El



Varadero of Manila; also Nine Thousand Pesos the amount of the instrument number 814 of the 29th of November, 1902.

"I have agreed with the said International Banking Corporation for the extinction of said obligations and its assistance in the partition of the property of the conjugal partnership of Martinez Ilustre with my son Don Pedro Martinez in the manner as follows:

"First. I obligate myself to sell with right of repurchase to the International Banking Corporation, all the houses which had been adjudicated to me in the said partition and a list of which is as follows:

\* \* \* \* \*

88 Second. The Bank in turn obligates itself to sell definitely to my son all the houses half of which were previously sold and hypothecated as of my own property and to cancel for this reason the loans upon the same which it is my duty to pay, delivering them free of such liens to my son Pedro Martinez;

Third. I also obligate myself to sell to the said Bank all and *it* its entirety the steamer "Germana," leaving free the guaranty which I previously gave to the bank, upon the half of the steamer "Don Francisco" which, in its turn shall become completely free and shall be delivered by the bank to my son Don Pedro Martinez;

Fourth. I also obligate myself to sell to said bank my participation in the properties situated in the province of Batangas, town of Balayan, and belonging to the conjugal partnership of Martinez-Ilustre, completing with this amount the entire sum of the obligation which I have or may have with such bank for which purpose I authorize the bank to intervene in my name in the said partition and to carry out the same extrajudicially with my said son Pedro Martinez in a just and equitable manner, including in the same whatever money, rights, credits, or shares which belong to me, which sale shall be understood to be for a price equivalent to the values shown in the partition;

Fifth. The International Bank obligates itself to place in account current at my disposition any excess of money which may result in my favor from the foregoing obligation according to the privies of the sales agreed upon, or which may be agreed upon for said sales, all with the right to repurchase within the period of six months;

Sixth. The bank obligates itself to accept for the accomplishment of the right of repurchase at its maturity the sum of four thousand pesos monthly, by which I shall extinguish the purchase price of said sale during the term stipulated and the extensions in  
89 their case for said repurchase.

Seventh. The Bank shall place at my disposition in account current, the excess of the amounts of the said sales as soon as the titles of property may be delivered to it and properly registered and not before;

Eighth. It shall be the obligation of the Bank every six months to extend the period of the rights of repurchase, in the event that the monthly payments of four thousand pesos agreed upon shall be paid punctually by me to extinguish and satisfy the amounts of the sales;



Ninth. For the purpose of effecting the preceding payments, I cede and transfer to the Bank my usufruct in the third part of the property set apart to my son, the amount of which I dedicate wholly to the payment of the said obligation;

Tenth. If for any reason I should not make the monthly payments of four thousand pesos and for this reason on maturity of the right of repurchase the same shall be held to have expired without the right of extension to which I would otherwise be entitled, the Bank on consummating this sale shall return the partial payments received;

Eleventh. I obligate myself to execute said instruments of cancellation, transfer and adjudication as may be necessary to comply with and carry into effect that which is above agreed to."

It appears from the evidence presented by the defendants  
90 that on the 15th day of June 1903, when this document was executed, the bank already had acquired an interest in almost all the property described therein. At the time it acquired such interest, the defendant, Martinez, owned one-half thereof, and his son, Pedro, the other half. On the 13th of June, 1903, Francisco Martinez and his son agreed upon a division of the property, which partition was approved by the Court of First Instance of Manila. It is evident that this document was executed for the purpose, among others, of making the claim which the bank had to an undivided half of the property of Francisco Martinez, a claim upon all the property which fell to Francisco Martinez in the partition.

The plaintiff considered that the document was in effect a mortgage upon the real estate described therein, and asked to have such real estate sold to satisfy the debts secured thereby—that is, the amount due the bank aforesaid. We do not agree with this construction of the instrument. That it is not a mortgage is very clear. It is a promise to sell real estate upon certain terms, and contemplates a subsequent contract of sale which should contain the terms stated in this document. It was evidently intended that whenever that final contract of sale was made, it should contain a clause giving to Francisco Martinez the right to repurchase the property within six months, not from the date of the document in question, that is to say, the 15th of June, 1903, but from the date when the final contract of sale with the right to repurchase was executed, and the obligation on the part of Martinez to pay P4,000 a month did not arise on the 15th day of June, 1903, but it was intended that it should arise whatever the final contract of sale with the right to repurchase was made. That this was the understanding of the Bank is clearly

shown, as claimed by the defendants, in the document of  
91 the 12th of February, 1904, which was executed by the plaintiff and by the defendant, Francisco Martinez. That document was void because at that time Francisco Martinez was under guardianship, but it clearly indicates the view which the Bank had of the nature of the contract of the 15th of June, 1903. To our minds, it states substantially the real obligations which Martinez incurred by this contract, obligations which he can now through his guardian be compelled to perform. The fact that the plaintiff

When an erroneous view of the nature of this contract can not be made of the right to such relief as the facts proven show it is entitled to. The contract is set out in the complaint and it is not stated that that complaint does not contain facts sufficient to constitute a good cause of action for the specific performance of the contract, except that it is claimed that such complaint is deficient because there is no allegation of any demand on Martinez for the execution of the contract of sale. Being under guardianship, it is evident that a demand would have been unavailing. No demand was therefore necessary. The fact that the plaintiff did not specifically ask for the relief for which we hold it is entitled, is not material. (Art. 126, Code of Civil Procedure.)

As the debt set out in the complaint in this case, no part thereof has been paid, but the evidence shows that the plaintiff has been in possession of certain real property described in the complaint, and has received rent therefor.

We do not understand that it was admitted at the trial that the plaintiff took possession of this property after the guardian was appointed. There is evidence tending to show that such possession was taken before that date. The net amount collected should be applied in reduction of the sum of 159,607.81 pesos, which according to the evidence the defendants owe to the plaintiff. If the case is remanded, the defendant should have an opportunity to question the expenses claimed to have been met by the plaintiff in connection with its possession of these buildings, which were deducted from the gross amount received.

After a consideration of the whole case, we hold that the plaintiff is entitled to a judgment in the court below, with costs, declaring that Francisco Martinez is justly indebted to it in the sum of 159,607.81 pesos, less such sum as that court may decide should be credited to Martinez for the net receipts from the real estate in question in this case, with interest on the balance from February 25th, 1905, at five per cent. per annum; and ordering that Francisco Martinez, Vicente Ilustre, as guardian of Francisco Martinez, execute and deliver to the plaintiff, within a time to be fixed by the court, such contract as is contemplated by the contract of June 15th, 1903, and should be substantially in the form of the instrument above referred to of date February 12th, 1904, omitting therefrom, however, the steamer "Germana." The judgment should contain a provision that whatever may be realized from the sale of the "Germana" under the judgment in case No. 3471 shall be considered as a partial payment when realized upon the amount due in this action.

The judgment of the court below is reversed, and the case is reversed with instructions to that court to enter judgment for the plaintiff in accordance with the views hereinbefore expressed. No writ will be allowed to either party in this Court.

After the expiration of 20 days let judgment be entered in accordance herewith and ten days thereafter the record will be returned to the court from whence it came.

Ordered.

S. Arellano, C. J., Torres, Mapa, Carson and Tracey, JJ.  
Concurring.

93 On March 3, 1908, the parties were duly notified of the rendition of the foregoing decision, and on the 14th of the same month Counsel for Defendants and Appellees, having been theretofore granted an extension of time by the Court until March 15th for so doing, presented the following motion for a rehearing:

94 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Come now the Defendants by their attorneys, Gibbs & Gale, and move the Court for a re-hearing in the above entitled actions, which were consolidated in the Trial Court, for the following reasons:

First. The judgment of the Court is not embraced within the issues joined.

a. Because the plaintiff fails to allege a tender of performance or a readiness and willingness on the part of the plaintiff to perform, or a demand upon the defendants to perform, or a refusal of the latter so to do.

b. The plaintiff bank, by declaring upon the contract of the 15th of June, 1903, the basis of the complaint in Case No. 3472 as a mortgage, and praying for the foreclosure thereof, shows affirmatively that it is not ready and willing to perform the conditions of said contract on its part to be performed and especially that part thereof which requires the bank to intervene in the partition proceedings, accept a transfer of the property therein described in full satisfaction of the obligation therein recited and to place at the disposal of the defendant Martinez the difference between the stipulated  
95 purchase price of said property and the amount of said obligation.

Second. The Court erred in determining that the findings of fact of the Court of First Instance were not sustained by the evidence.

Third. The Court erred in reversing the findings of fact, of the Court of First Instance, and in making new findings of fact.

Fourth. The Court erred in reversing the judgment of the Court of First Instance.

Fifth. The Court erred in rendering judgment for the plaintiff, because said judgment is contrary to law and the findings of fact therein are plainly and manifestly against the weight of evidence.

Sixth. The Court erred in not finding that the instruments of May 2nd and June 15, 1903, forming the causes of action in these cases, were procured from the defendant Martinez by fraud and undue influence, and without consideration.

Seventh. The Court erred in finding that the instrument of May

1903, the basis of Case No. 3471, was not cancelled, released and substituted by the instrument of June 15, 1903, for the reason that the latter instrument specifically provides for the sale and transfer to the Bank of the Steamer "Germana," the security mentioned in the former instrument at a price to be agreed upon, in identically the same manner as it provides for the sale of real estate described in said instrument of June 15th, and for the reason that the instrument of February 12, 1904, which the Court finds to be a practical compliance with the terms of the instrument of June 15th, recites the sale and transfer to the Bank by the Defendant Martinez of said steamship "Germana" at the stipulated price of Thirty-five Thousand Pesos (P35,000.).

6 Eighth. The Court erred in finding that the Plaintiff Bank is not obligated under the terms of the instrument of June 15th to purchase the Steamer "Germana" at the price of P35,000.00 and under the same conditions as those provided for the purchase of the real estate described therein, for the reason that the provisions of said contract with reference to the purchase of said steamer are identical with those stipulated for the purchase of the real estate, and there are no circumstances or proof of any kind tending to support the interpretation placed upon said instrument by the Court to the effect that the instrument of June 15th has no other effect than to release the steamer "Don Francisco" from the lien created by the instrument of May 2, 1903.

Ninth. The Court erred in rendering judgment against the Defendants for any sum whatever, for the reason that neither the pleadings nor the proofs show that the defendants have failed or refused in any respect to comply with the contract of June 15th, nor that the defendants are indebted to the plaintiff bank in any sum whatever, but on the contrary the plaintiff bank, under the terms of said contract in relation with the price stipulated for the property, as set forth in the instrument of February 12, 1904, in assuming the Court's findings to be correct, indebted to the defendants for the difference between the total purchase price of said property and the amount found by the Court to have been advanced by the plaintiff bank to the defendant Martinez.

Tenth. The Court erred in not finding that the considerations recited in each of the instruments of May 2, 1903, and of June 15, 1903, were fictitious, false and fraudulent.

7 Eleventh. The Court erred in finding that the amount sued for in the present actions was disbursed by the Bank on checks drawn by the defendant Martinez.

Twelfth. The Court erred in finding that the Defendant Martinez was not mentally incapacitated and incapable of conducting his affairs at the time of the transactions involved in this case, and in finding that the only evidence offered in support of this allegation was the statement of the witness, Cantero, and a statement of the witness, John.

Thirteenth. The Court erred in finding that the witness Early was a witness for the defense and in therefore considering that the Defendants were bound by his declaration.

Fourteenth. The Court erred in finding that the allegation of the Defendants with reference to the signing of notes and checks on account of threats made by R. W. Brown "finds no support in the evidence."

Fifteenth. The Court erred in finding as an undisputed fact that Martinez testified that he had lost 300,000 pesos at cards prior to the 20th of January.

Sixteenth. The Court erred in finding that the game of burro is not prohibited by the laws of the Philippine Islands.

Seventeenth. The Court erred in finding that the evidence fails to connect Brown, as representative of the Bank, with the conspiracy and in finding that the evidence referred to in its decisions in said cases was all of the competent evidence to show such connection.

Eighteenth. The Court erred in not finding that the Bank is bound by the fraud of its manager, R. W. Brown.

Nineteenth. The Court erred in not sustaining the defendant's allegation that Ricardo Regidor was the agent and representative of the Bank, acting under the instructions of its manager, Brown, in fraudulently preparing and securing the execution by the defendant Martinez of the documents sued upon and of the various notes and checks, constituting the alleged consideration of the same.

Twentieth. The Court erred in not finding that the Bank, by suing upon the instruments executed by the Defendant Martinez, adopted and ratified the fraudulent means by which they were procured.

Twenty-first. The Court erred in rendering two judgments against the defendants in the cases numbered 3471 and 3472, for the reason that said cases were consolidated and the subject matter thereof constitute one and the same transaction and controversy.

Twenty-second. The Court erred in directing judgment to be entered against the defendants in Case No. 3471 for P28,599.13 or for any sum whatever, after having rendered judgment in Case 3472 for a sum which the Court expressly finds includes the amount of the obligation sued upon in said Case No. 3471, because if the Court's findings are correct, the order in Case No. 3471 should be solely and exclusively for the satisfaction of such part of the judgment in Case No. 3472 as may be made out of the sale of the steamship "Germana," and for the reason that the judgments, as rendered in both of said causes, are indefinite and uncertain in that it cannot be determined therefrom whether in case the steamship "Germana" should sell for less than the amount of the judgment in case No. 3471, the plaintiff would have the right to collect the deficiency, or, in other words, to collect twice, the difference between the amount for which the steamship "Germana" may be sold and the amount for which judgment is entered in Case No. 3471.

99 Twenty-third. The Court erred in finding in case No. 3472 as follows: "We do not understand that it was admitted at the trial that the Plaintiff took possession of this property after the guardian was appointed."

Twenty-fourth. The Court erred in denying defendant's prayer for the return to the guardian of the property wrongfully seized by

the Plaintiff Bank without reference to the time when such seizure took place, for the reason that the instrument of June 15th gives the Plaintiff no right to such possession.

Twenty-fifth. The Court erred in reversing the judgment of the trial court in favor of the defendant and against the plaintiffs for the gross receipts produced by the properties of the defendants while wrongfully in the possession of the Plaintiff Bank.

Respectfully submitted,

GIBBS & GALE,  
*Attorneys for Defendants.*

Manila, March 14, 1908.

100 On the 17th of March, 1908, the foregoing motion for a rehearing was, by resolution of the Court, denied.

On the 19th of March, 1908, attorneys for defendants and appellees begged leave to present and file their exception to the decision of the Supreme Court, and to the order of the 17th of March, 1908, denying their motion for a rehearing in said cause. On the 20th of March, 1908, the court by resolution allowed the said exception to the decision of the 29th of February, and to the order of the 17th of March, 1908, overruling the motion for a rehearing, to be filed.

On the 24th of March, 1908, a final judgment was entered in the said cause, which said judgment is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees. *Defendants and Appellees.*

March 24, 1908. Decision Book 5, f. — Docket No. 3472.

This Court having regularly acquired jurisdiction to try the above entitled cause, which was submitted by both parties for decision, after consideration by the Court upon the record and proceedings, its decision and order for judgment having been filed on the 29th of February, 1908.

101 It is hereby ordered, that the judgment of the Court of First Instance of the City of Manila, appealed from and dated March 29th, 1906, be reversed and the case remanded to the Court from which it came, with directions to the Judge to enter judgment in favor of the plaintiff in accordance with the decision of this Court, without special provision as to the costs of this appeal.

It is further ordered that ——— recover from ——— the sum of P—— as costs.

(Signed)

[SEAL OF COURT.]

J. E. BLANCO,  
*Clerk of the Supreme Court of  
the Philippine Islands.*

## 102 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the Philippine Islands, and to the Plaintiff and Appellant, the International Banking Corporation and its Attorneys, Messrs. Kinney and Lawrence:

You are hereby notified that Francisco Martinez and his Guardian, Vicente Ilustre, Defendants and Appellees in the above entitled causes and in each of them, ask permission of the Court to file this their exception to the judgments entered in said causes and in each of them by this Court on the 24th day of March, 1908, in accordance with its decisions and decrees of the 29th of February of the same year, reversing the judgments of the Court of First Instance of Manila in said causes and in each of them.

Manila, March 25, 1908.

GIBBS & GALE.

*Attorneys for Defendants and Appellees.*

Received copy, Mar. 25, 1908.

KINNEY & LAWRENCE,

*Attorneys for Plaintiff and Appellant.*

## 103 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

*Petition for Appeal.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners would respectfully represent that two causes between the same parties entitled as above, pending in the Supreme Court of the Philippine Islands, bearing respectively Docket Nos. 3471 and 3472 were, under Docket Nos. 3363 and 3365, consolidated



and tried together in the Court of First Instance, all of the evidence in both causes being made applicable to each of said causes; that cause No. 3471, in which the amount in controversy is P30,000.00 Philippine Currency, equivalent to \$15,000.00 U. S. Currency, is an incident and part of the same transaction and controversy involved in Cause No. 3472, in which the amount in controversy is \$159,607.81, Philippine Currency, equivalent to \$79,803.90, U. S. Currency (Act of Congress, March 2, 1902); that although the Court of First Instance rendered two separate judgments dismissing each of said actions, the findings of fact set out in the judgment in cause No. 3365 is referred to and made applicable to the judgment in cause 3363; that the Supreme Court of the Philippine Islands in its decision and decree in cause No. 3471 expressly recites that the alleged debt for which judgment is decreed in that action is included in the obligation for the total amount of which judgment is decreed in cause 3472 and in the latter cause attempts to avoid a double recovery of the amount of the decree in cause No. 3471 by providing that the amount realized from the execution of the judgment decreed in that cause shall be applied on the amount for which judgment is decreed in cause No. 3472; that the said Supreme Court in its decision and decree in cause No. 3472 refers to its decision and decree in cause No. 3471 as a part thereof; that the decision of the Court in cause No. 3471 is in effect nothing more than an order for the execution of a part of the judgment decreed in cause No. 3472, and finally that from the very nature of the controversy in said actions the Supreme Court of the United States cannot determine on appeal cause No. 3472 without at the same time deciding the merits of and determining cause No. 3471, all of which more fully appears from the stipulation of consolidation (Page 1 Tr. of Evidence), the pleadings and the judgments in the Court of First Instance and in the Supreme Court of the Philippine Islands.

That said decision and decree of said Supreme Court of the Philippine Islands entered in Cause No. 3471 on the 29th day of February, 1908, is a final decree and is greatly to the injury and prejudice of your Petitioners and is erroneous and inequitable in many particulars which more fully appear from the assignment of errors accompanying this Petition.

That said decision and decree of said Supreme Court of the Philippine Islands entered in cause No. 3472 on the 29th day of February, 1908, is a final decree and is greatly to the injury and prejudice of your Petitioners and is erroneous and inequitable in many particulars which more fully appear from the said assignment of errors.

Wherefore, in order that your Petitioners may obtain relief on the premises and have opportunity to show the errors complained of, your Petitioners pray: (a), that they may be allowed to appeal said causes jointly to this Honorable Court, or, (b), should it be considered better practice to admit said appeals separately, then your Petitioners pray that they may be allowed an appeal in each of said



causes and that the proper orders touching the security required of them may be made.

FRANCISCO MARTINEZ.  
And His Guardian VICENTE ILUSTRE,  
By GIBBS & GALE,  
*Their Attorneys.*

# 106 THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and  
Appellant,  
vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

## *Assignment of Errors.*

Come now the Defendants by their attorneys, Gibbs & Gale, and say that there is manifest error in the decisions and decrees of the Supreme Court of the Philippine Islands in the above entitled causes and in each of them in this, to wit:

First. The judgment of the Court is not embraced within the issues joined.

*a.* Because the plaintiff fails to allege a tender of performance or a readiness and willingness on the part of the plaintiff to perform, or a demand upon the defendants to perform, or a refusal of the latter so to do.

*b.* The plaintiff bank, by declaring upon the contract of the 15th of June, 1903, the basis of the complaint in Case No. 3472 as a mortgage, and praying for the foreclosure thereof, shows affirmatively that it is not ready and willing to perform the conditions of said contract on its part to be performed and especially that part thereof which requires the bank to intervene in the partition proceedings, accept a transfer of the property therein described in full satisfaction of the obligation therein recited and to place at the disposal  
107 of the defendant Martinez the difference between the stipulated purchase price of said property and the amount of said obligation.

Second. The Court erred in determining that the findings of fact of the Court of First Instance were not sustained by the evidence.

Third. The Court erred in reversing the findings of fact of the Court of First Instance, and in making new findings of fact.

Fourth. The Court erred in reversing the judgment of the Court of First Instance.

Fifth. The Court erred in rendering judgment for the Plaintiff, because said judgment is contrary to law and the findings of fact therein are not sustained by the evidence but are plainly and manifestly against the weight of evidence.

Sixth. The Court erred in rendering two judgments against the defendants in the cases numbered 3471 and 3472, for the reason that said causes were consolidated and the subject matter thereof constitute one and the same transaction and controversy.

Seventh. The Court erred in directing judgment to be entered against the defendants in Cause No. 3471 for P28,599.13, or for any sum whatever, after having rendered judgment in Cause 3472 for a sum which the Court expressly finds includes the amount of the obligation sued upon in said Cause No. 3471, because if the Court's findings are correct, the order in Cause No. 3471 should be solely and exclusively for the satisfaction of such part of the judgment in Cause No. 3472 as may be made out of the sale of the steamship "Germana," and for the reason that the judgments, as rendered in both of said causes, are indefinite and uncertain in that it cannot be determined therefrom whether in case the steamship "Germana" should sell for less than the amount of the judgment in Cause No. 3471, the plaintiff would have the right to collect the deficiency, or, in other words, to collect twice, the difference between the amount for which the steamship "Germana" may be sold and the amount for which judgment is entered in Cause No. 3471.

Eighth. The Court erred in finding that the instrument of May 1, 1903, the basis of Cause No. 3471, was not cancelled, released and substituted by the instrument of June 15, 1903, for the reason that the latter instrument specifically provides for the sale and transfer to the Bank of the Steamer "Germana", the security mentioned in the former instrument at a price to be agreed upon, in identically the same manner as it provides for the sale of real estate described in said instrument of June 15th, and for the reason that the instrument of February 12, 1904, which the Court finds to be a practical compliance with the terms of the instrument of June 15th, recites the sale and transfer to the Bank by the Defendant Martinez of said steamship "Germana" at the stipulated price of Thirty-five Thousand Pesos (P35,000.00).

Ninth. The Court erred in decreeing in Cause No. 3472 as follows: "That Francisco Martinez and Vicente Lustre, as guardian of Francisco Martinez, execute and deliver to the Plaintiff within a time to be fixed by the Court, such a contract as is contemplated by the contract of June 15, 1903, which should be substantially in the form of the instrument above referred to of date February 12, 1904.

Tenth. The Court erred in finding that the Plaintiff Bank is not obligated under the terms of the instrument of June 15th to purchase the Steamer "Germana" at the price of P35,000.00 and under the same conditions as those provided for the purchase of the real estate described therein, for the reason that the provisions of said contract with reference to the purchase of said steamer are identical with those stipulated for the purchase of the real estate, and there are no circumstances or proof of any kind tending to support the interpretation placed upon said instrument by the Court to the effect that the instrument of June 15th has no other effect

than to release the steamer "Don Francisco" from the lien created by the instrument of May 2, 1903.

Eleventh. The Court erred in rendering judgment against the Defendants for any sum whatever, for the reason that neither the pleadings nor the proofs show that the defendants have failed or refused in any respect to comply with the contract of June 15th, nor that the defendants are indebted to the plaintiff bank in any sum whatever, but on the contrary the plaintiff bank, under the terms of said contract in relation *with* the price stipulated for the property, as set forth in the instrument of February 12, 1904, is, assuming the Court's findings to be correct, indebted to the defendants for the difference between the total purchase price of said property and the amount found by the Court to have been advanced by the plaintiff bank to the defendant Martinez.

Twelfth. The Court erred in finding that a demand on the guardian would have been unavailing, and that no demand was therefore necessary.

Thirteenth. The Court erred in not finding that the instruments of May 2nd and June 15, 1903, forming the causes of action in these cases, were procured from the defendant Martinez by fraud and undue influence, and without consideration.

110 Fourteenth. The Court erred in not finding that the considerations recited in each of the instruments of May 2, 1903, and of June 15, 1903, were fictitious, false and fraudulent.

Fourteenth- $\frac{1}{2}$ . The Court erred in finding a consideration for the contracts sued upon entirely at variance with the allegations of the complaint and the express terms of the contracts themselves and in reversing the findings of the Court of First Instance holding in effect that the evidence offered by the plaintiff was incompetent and inadmissible to establish such consideration.

Fifteenth. The Court erred in finding that the evidence fails to connect Brown, as representative of the Bank, with the conspiracy and in finding that the evidence referred to in its decisions in said cases was all of the competent evidence to show such connection.

Sixteenth. The Court erred in not finding that the Bank is bound by the fraud of its manager, R. W. Brown.

Seventeenth. The Court erred in finding that the allegation of the Defendants with reference to the signing of notes and checks on account of threats made by R. W. Brown "finds no support in the evidence."

Eighteenth. The Court erred in not sustaining the defendants' allegation that Ricardo Regidor was the agent and representative of the Bank, acting under the instructions of its manager, Brown, in fraudulently preparing and securing the execution by the defendant Martinez of the documents sued upon and of the various notes and checks, constituting the alleged consideration of the same.

Nineteenth. The Court erred in finding that the defendant Martinez was not mentally incapacitated and incapable of conducting his affairs at the time of the transactions involved in this case, and in finding that the only evidence offered in support of this allegation was a statement of the witness, Cantero, and a statement of the witness, Cohn.

111 Twentieth. The Court erred in not finding that the Bank by suing upon the instruments executed by the Defendant Martinez, adopted and ratified the fraudulent means by which they were procured.

Twenty-first. The Court erred in finding that the amount sued for in the present actions was disbursed by the Bank on checks drawn by the defendant Martinez.

Twenty-second. The Court erred in finding as an undisputed fact that Martinez testified that he had lost 300,000 pesos at cards prior to the 20th of January.

Twenty-third. The Court erred in finding that the game of burro is not prohibited by the laws of the Philippine Islands.

Twenty-fourth. The Court erred in finding that the witness Early was a witness for the defense and in therefore considering that the Defendants were bound by his declaration.

Twenty-fifth. The Court erred in finding in cause No. 3472 as follows: "We do not understand that it was admitted at the trial that the Plaintiff took possession of this property after the guardian was appointed," and in failing to find from the evidence that the Plaintiff took possession of the property after the decree of incompetency and the appointment of the guardian.

Twenty-sixth. The Court erred in denying defendant's prayer for the return to the guardian of the property wrongfully seized by the Plaintiff Bank without reference to the time when such seizure took place, for the reason that the instrument of June 15th gives the Plaintiff no right to such possession.

Twenty-seventh. The Court erred in reversing the judgment of the trial court in favor of the defendant and against the plaintiffs for the gross receipts produced by the properties of the defendant while wrongfully in the possession of the Plaintiff Bank.

112 Wherefore, Defendants pray that the decisions and decrees of the Supreme Court of the Philippine Islands in the above entitled causes and in each of them be reversed, ordering that final decrees, in favor of the Defendants, be entered in said causes and in each of them, in accordance with the judgment of the Court of First Instance of Manila.

Respectfully submitted,

GIBBS & GALE,  
*Attorneys for Defendants.*

Manila.

## 113 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Having read the petition accompanied by an Assignment of Errors presented by the attorneys for the Defendants on the 3rd inst., and it appearing that the amount involved exceeds Twenty-five Thousand Dollars (\$25,000.00) United States Currency, the appeal interposed by said Defendants to the Supreme Court of the United States against the decision and final judgment entered in this case is hereby admitted and it is ordered that the record, evidence, stipulation, and other proceedings be translated to the English language, forwarding thereupon a certified copy of the same to the Supreme Court of the United States.

It is further ordered that the amount of the bond to be given by the Defendants and Appellants shall be in the sum of Six Thousand Dollars (\$6000.00) United States Currency, to respond for the costs and damages which may be occasioned by reason of said appeal.

Manila, P. I., April 4, 1908.

(Signed)

FLORENTINO TORRES,

*Justice Supreme Court of the Philippine Islands.*

## 114 THE UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

No. 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appellant,

v.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Know all men by these presents, that we Pedro Martinez and Manuel Hidalgo are held and firmly bound unto The International Banking Corporation at Manila, P. I., in the full and just sum of Six Thousand Dollars United States Currency, to be paid to the said The International Banking Corporation or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of April, in the year of our Lord, one thousand nine hundred and eight.

Whereas, lately in a cause depending in the Supreme Court of the Philippine Islands between The International Banking Corporation, Plaintiff, and Francisco Martinez and his guardian, Vicente Ilustre, Defendants, bearing docket number 3472, a final decree was rendered against the said Defendants, and the said Defendants having ob-

tained the allowance of an appeal, and filed a copy thereof in the Clerk's office of the said Court to reverse said decree, and a citation having issued directed to the said The International Banking Corporation, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington within one hundred and twenty days from the date hereof.

115 Now the condition of the above obligation is such that if the said Defendants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation shall be void; else to remain in full force and virtue.

(Signed)

PEDRO MARTINEZ.  
MANUEL HIDALGO.

Sealed and delivered in the presence of:

Witness:

(Sgd.) VICENTE ALBERT.  
MANUEL GARCIA.

Approved (to operate as a supersedeas).

(Sgd.) By FLORENTINO TORRES.

*Justice of the Supreme Court of the Philippine Islands.*

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila, ss:*

Pedro Martinez and Manuel Hidalgo being duly sworn, depose and say, each for himself, that he is worth Six Thousand Dollars United States Currency over and above all just debts, liabilities and exemptions.

(Sgd.)

PEDRO MARTINEZ.  
MANUEL HIDALGO.

Sworn to before me this 25 day of April, A. D. 1908.

(Sgd.)

SAM. FERGUSON,

[COURT SEAL.]

*Deputy Clerk of the Supreme Court  
of the Philippine Islands.*

116

Copy.

The United States of America to the International Banking Corporation and to its Attorneys, Messrs. Kinney & Lawrence, Manila, P. I.:

You are hereby notified that in a certain cause in the Supreme Court of the Philippine Islands, bearing docket number 3472, wherein The International Banking Corporation is Plaintiff and Appellant, and Francisco Martinez and his guardian, Vicente Ilustre, are Defendants and Appellees, the Defendants therein have prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed;

Wherefore, you are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within one

hundred and twenty days from the date hereof to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to the appellants, Francisco Martinez and his guardian, Vicente Ilustre, as by them prayed and as to justice and equity may appertain.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25 day of April, 1908.

FLORENTINO TORRES,

*Justice of the Supreme Court of the Philippines.*

Received copy this 25th of April 1908.

KINNEY & LAURENCE.

*Attorneys for the Internacional  
Banking Corporation.*

JOHN W. SLEEPER,

*Attorneys for Internacional  
Banking Corporation.*

107 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. Nos. 3471 and 3472.

THE INTERNATIONAL BANKING CORPORATION, Plaintiff and Appel-  
lant,

vs.

FRANCISCO MARTINEZ et al., Defendants and Appellees.

Come now the defendants and state:

That in the above entitled cases and in each of them there are many important documentary proofs, which in their nature can not be reproduced or accurately described in the certified translation thereof, inasmuch as they include rubrics and special signs endorsed on checks and mutilated and incomplete documents and signatures.

That it is essential to the just determination of the cases that the Supreme Court of the United States inspect said original documents and owing to the fact that they are all sewed and bound together, it is not practicable to separate them.

Therefore, the defendants pray that, in conformity with paragraph 4 of Rule 8 of the Supreme Court of the United States, the Clerk be ordered to forward to the Supreme Court of the United States the roll of exhibits consisting of original documentary proofs.

Manila, May 8, 1908.

(Signed)

GIBBS & GALE,

*Attorneys for Defendants.*

To The Honorable Florentino Torres, Associate Justice of the Supreme Court of the Philippine Islands.

Having read the foregoing motion, the same is granted.

(Signed)

FLORENTINO TORRES,

*Associate Justice of the Supreme  
Court of the Philippine Islands.*

THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Civil Cases Nos. 3363 and 3365.

THE INTERNATIONAL BANKING CORPORATION  
 versus  
 FRANCISCO MARTINEZ and CHARLES C. COHN, as Guardian of said  
 Francisco Martinez.

Messrs. Kinney, Odlin & Lawrence for plaintiff.  
 Messrs. Gibbs, Gale & Carr for defendants.

CHAS. A. McDONOUGH,  
*Official Reporter.*

THE UNITED STATES OF AMERICA,  
*Philippine Islands:*

In the Court of First Instance, City of Manila, Part III.

Civil Cases Nos. 3363 & 3365.

THE INTERNATIONAL BANKING CORPORATION  
 versus  
 FRANCISCO MARTINEZ and VICENTE ILUSTRE, as Guardian of said  
 Francisco Martinez.

Before Hon. John C. Sweeney, Judge.

FEBRUARY 28, 1906.

Appearances:

Messrs. Kinney, Odlin & Lawrence, for the plaintiff.  
 Messrs. Gibbs, Gale & Carr, for the defense.

It is stipulated that these two cases, Nos. 3363 and 3365, may be  
 together and that the defendants may amend their answer in  
 as soon as they have opportunity, as of this date.

WILLIAM H. TAYLOR, a witness for the plaintiff, being duly sworn  
 in Court in English, testified as follows:

Direct examination by Mr. ODLIN:

What is your name, residence and occupation?  
 William H. Taylor, 25 Calle San Jose, Ermita, acting account-  
 International Banking Corporation.

How long have you been connected with the International  
 Banking Corporation?

For about three years.



Q. I will show you a document and ask you to state what it is?

2 A. This is the escritura in reference to the steamers "Don Francisco" and "Germana" marked for identification, Exhibit "A."

Q. Who signed that escritura?

A. Signed by Francisco Martinez.

Q. Anybody else?

A. And by Jose Gervacio Garcia, Benito Robles, R. W. Brown and Gregorio Ramos.

Q. Who was R. W. Brown?

A. Manager of the International Banking Corporation at that time, Manila Branch.

Judge ODLIN: I offer this document in Evidence as Exhibit "A."

Mr. GIBBS: Objected to for the reason that it appears in the complaint in case No. 3365 that this document has been included in and cancelled by the document of the 15th of June, 1903.

The COURT: Let the document be admitted and if it so appears, it will be considered: as *it* the effect of the document, ruling reserved.

Q. The sum of money mentioned in that complaint is, I believe, 30,000 pesos; is that Mexican or Philippines currency?

A. Mexican currency.

Q. How much of it, if any, has ever been repaid to the International Bank?

A. Not a cent.

Q. Any interest been received?

A. Nothing.

Q. I will ask you if Francisco Martinez is indebted to the International Banking Corporation in any sum outside of this sum?

3 Mr. GIBBS: Objected to as no proper foundation has been laid for its admission.

Mr. ODLIN: We are trying both cases together, but I can take him off the stand and put him back.

Mr. GIBBS: If this question is asked with reference to 3365, I desire to make the further objection to the introduction of the evidence for the reason, that the complaint in that case does not state a cause of action.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. Yes, sir.

Q. Please state to the Court, if you can, how much money Francisco Martinez is indebted to the International Banking Corporation?

A. At the present time, or when this suit was brought?

Q. Either?

Mr. GIBBS: I would like to question the witness as to his means of knowledge, for the purpose of founding an objection to the competency of the testimony.

The COURT: You may cross-examine him and test him. Let him answer.

A. On the 9th of June, 1904, the amount of overdraft in account current amounted to 158,378.27 Mexican currency and the face amount of the two loans, which amounts were, respectively, without interest, \$13,000 gold and \$9,000 Mexican. I have not the dates of those, but I can get them if I refer to the memorandum (refers to the memorandum) I will give the amounts up to date; amount of the loan at the present time is 10,435.36 pesos Philippines Currency; when I say pesos it is Philippines Currency and when I say "dollars" it is Mexican; the other loan is P25,507.82.

Q. I will ask you whether that amount which you testify to being 58,000 pesos, more or less, includes the item of 30,000 pesos mentioned in the document "A"?

A. Yes, sir.

Q. And the 30,000 pesos was Mexican, that is mentioned in the document?

A. Yes, sir.

Q. Now, the 10,435.36 pesos which you testified to and the 25,507.82 pesos Philippines Currency, which you testified to are they separate and distinct from the indebtedness represented by the 58,000 pesos?

Mr. GIBBS: Objected to as leading and no proper foundation laid for its admission.

Mr. OBLIN: Question withdrawn.

Q. Please explain to the Court the nature of the account represented by 10,435.36 Conant and the item of 25,507.82 Conant with respect to the other larger item of 158,378.27 Mexican?

Mr. GIBBS: Objected to as incompetent and no foundation laid for its admission.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. There is no connection between the amounts.

Q. I will ask you if you know what the value of Mexican currency is to-day as compared with Philippines Currency?

A. Yes, sir.

Q. What are the values of the two moneys?

A. The value of 100 pesos Mex. is equal to 104 pesos Conant; that is, Conant is 4% premium.

Q. Then Mexican currency at the present time is at a premium?

A. Yes, sir, 4%.

Q. State if you know, what is the amount due the Bank at present from Francisco Martinez upon that item of 158,378.27.

Mr. GIBBS: Objected to as no foundation is laid for its admission and is incompetent; the instrument upon which the suit is based is the best evidence.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. I have not the exact figures; roughly it is 172,000; I can furnish the figures, it simply consists of interest added from month to

month on current account; that is without interest of the present month of February.

Q. This amount of 172,000 pesos which you testified as now due, is that Conant or Mexican?

A. Conant, we were compelled by law to transfer our accounts to Conant on a certain day.

Q. Has any part of that 172,000 pesos ever been paid to the Bank by Francisco Martinez or anybody on his behalf?

A. No, sir.

Q. And part of the item of 10,435.36 pesos ever been paid?

A. No, sir.

Q. Or the item of 25,507.82?

A. I would like to explain about this item of 25,000 and odd; the loan was originally for \$13,000 gold and this is one of the properties for which Mr. Wolfson is collecting the rents; it is the practice of the Bank to debit up the interest to the loan every six months and at the same time a credit for the rents, that is the net amount of rents collected on the property which carries the loan; in this case it makes a total of the indebtedness less than the amount of the advance.

Q. Any part of this sum of 25,507.82 ever been paid to the Bank?

6 A. No, sir. I might add that those figures represent the amount outstanding December 31st.

Q. Then this sum of 25,000 and odd, is the amount of Conant due the Bank at the end of business on December 31, 1905?

A. Yes, sir.

Q. And the 10,435.36 likewise represents the amount due the Bank at the end of business December 31, 1905?

A. Yes, sir.

Q. Since the 31st of December, 1905, has Francisco Martinez paid anything to the Bank on account of these loans or has any person made any payment for him?

A. No, sir.

Q. Do you know Don Francisco Martinez personally?

A. No, sir.

Q. How do you know then that he signed that document?

A. His signature is registered in the Bank, like a thousand other signatures I could say, but I do not know the people who sign them.

Judge OBLIN: That is all at present, unless there is something I have overlooked.

The COURT: You may question again about any matters which you have overlooked.

Cross-examination by Mr. GIBBS:

Q. When did you arrive in Manila to enter the Manila Branch of the International Banking Corporation?

A. February 9, 1904.

Q. So all the business transactions had with Martinez were previous to your arrival in Manila?

A. Yes, sir.

Q. And you had then and have now, no personal knowledge of those transactions?

A. None, whatever.

Q. The only knowledge which you have of the figures given here by you and of the facts stated by you are those which you have derived from an examination of the books?

A. From the records of the Bank, yes, sir.

Q. And those books, are they present in the court-room?

A. The books themselves are not, transcripts are; I am testifying from transcripts here; the books are in daily use in the Bank.

Q. And so that your testimony has not been given from the books?

A. Been given from the books, or extracts I have made up myself that were made up under my supervision from the books.

Q. Some of those extracts were made up by other employees of the bank?

A. Yes, but they have all been checked by me.

Q. Your testimony has been given entirely from the extracts which you have before you?

A. Do you mean as regards the amount of indebtedness, or the way I derive my knowledge?

Q. Amount of indebtedness?

A. For instance, the checks which caused the overdraft are present in court; I cannot tell how the indebtedness was contracted.

Q. In examining the accounts with reference to this Martinez transaction did you find them kept in a good, expert manner?

A. The account- of Francisco Martinez are kept in a remarkably good manner.

Q. In whose handwriting were those books kept?

A. Hand of a native clerk; the loans are in the hand of my present chief clerk who made my extract here.

Q. Find any entries made by R. W. Brown?

A. I never saw any of his handwriting in any of the books.

Q. In your investigation of the amount due, did you find his handwriting in any document connected with it?

A. In proving up the entries in the current account, his initials are on the checks, as required of every officer of the Bank when an overdraft is granted; every overdraft must be initialed by one of the head officers of the Bank, either the manager or the accountant.

Q. After you arrived in Manila, did you discover any irregularities in connection with this Martinez matter?

A. No, sir.

Q. Nor in connection with the transactions between Mr. Brown and Mr. Regidor?

WITNESS: Must I answer that question, your Honor?

Judge ODLIN: Objected to unless such irregularity in transactions between Regidor and Brown affected Martinez. If he will limit to the Martinez matter, I have no objection.

Mr. GIBBS: If it in no manner connects with the Martinez matter, it will have no effect. I offer to prove by the witness that there were irregularities of a suspicious character indicating a conspiracy be-

tween Regidor and Brown, for the purpose of corroborating and as a circumstance to show the alleged conspiracy in this case.

The COURT: I will permit you to confine this question to a question connected with the Martinez estate, and I will determine the other later.

Mr. GIBBS:

9 Q. You may state to the Court whether or not on your arrival in Manila, or soon thereafter, you discovered any irregularities between Mr. Brown and Mr. Regidor affecting the Martinez obligation or account?

A. No, sir.

Q. Did you discover any irregularities as between Mr. Brown and Mr. Regidor in other transactions had at about the same time of the Martinez transaction?

Mr. ODLIN: Objected to as irrelevant, and if carried out would lead us into issues which could not possibly be tried in this case and might affect the rights of third parties; further, it is not legitimate cross-examination because there was nothing in the direct examination touching this matter; it is purely a matter of defense.

The COURT: The trouble is, Mr. Gibbs, that you do not establish any connection between Regidor & Brown as to anybody or any transaction.

Mr. GIBBS: In case we do not make the connection, I think it is the practice to allow testimony to be introduced out of the legitimate order and unless connection is made, the testimony will be stricken out; we are perfectly willing to have it admitted with that understanding.

The COURT: I am inclined to think it is not admissible. It is the adjourning hour now, and I will rule at the opening of the next session.

Adjourned until 8 A. M.

### Proceedings Held March 1, 1906.

Same appearances.

Witness, TAYLOR, on the stand.

The COURT: I do not believe the question is admissible and I will investigate the question and if I find it admissible I will permit you to introduce Mr. Taylor. My opinion now is that it is not. The Court reserves the question and the witness is permitted to answer until the further investigation of the Court.

Mr. GIBBS, continuing:

10 Q. When were these memoranda from which you state you refresh your memory, consisting of a pass-book endorsed Francisco Martinez, Mex. Currency, and a piece of foolscap containing what you term "Loans to Francisco Martinez," made?

A. The pass-book I had made up when the trial was first set, quite

some time ago, but the other I made up the day before the present trial came off.

Q. Do these memorandums purport to contain extracts of the only accounts of your Bank with Martinez?

A. The only outstanding accounts.

Q. Do they purport to contain extracts of the entire account of Francisco Martinez from the beginning of the transactions down to the present time?

A. I would not like to say as to that, I do not know of any transactions whether finished or not; these are the only accounts on which there is any indebtedness.

Q. Who was in charge of the Bank during all the time that these obligations were contracted?

A. Mr. Brown.

Q. Who was the book-keeper at that time?

A. Native clerk, do you mean?

Q. I mean the book-keeper?

A. There are about six book-keepers; I hardly know what you are driving at in your question.

Q. Who was the head book-keeper during that time?

A. There is a head book-keeper for each department; there is a chief-clerk in charge of the loans, a chief-clerk in charge of the current accounts and a chief-clerk in charge of local bills discount.

Q. Who was the head clerk of the loan account at that time?

A. A man by the name of de Silva, a Portuguese.

Q. Where is he now?

11 A. He is in the Bank, he is still my head clerk.

Q. Who was the head clerk or book-keeper of the current account at that time?

A. A native I never met, he left the Bank before I came into the service, he is in Hongkong I understand.

Q. And Mr. Brown had absolute control and supervision of all these accounts?

A. No, Mr. Norry had charge of all the accounts at the Bank the same as I; Mr. Martin attends to the exchange. I attend to the accounts of the Bank.

Q. Where is Mr. Norry?

A. He is in Hongkong, he is acting accountant at Hongkong.

Q. Where is Mr. Brown now?

A. I do not know.

Q. Is there anybody in Manila, outside of yourself, who has any knowledge of these accounts and the keeping of the books during the period of these transactions other than those you have mentioned?

A. There are two gentlemen at present on the staff, one of them was brought here because of the press of work to make up back reports, he may know in a general way, but no one has gone into these accounts, except myself, not even the manager.

Mr. GIBBS: I move to strike out the evidence of this witness as to the accounts of Francisco Martinez with the Bank for the reason that it is hearsay, not the best evidence and entirely incompetent.

The COURT: I will reserve my ruling on that. Proceed with the proof. Saving an exception to either party when I rule.

Q. This memorandum or pass-book from which you have given your testimony as to the current account of Francisco Martinez and which shows that there is about P44,000 charged against the Mar-

12        tinez account, without interest after June 15, 1903, the date of the instrument upon which suit is brought, doesn't it?

A. Between 43,000 and 44,000.

Q. On June 15th, the total charge against Martinez's current account as shown by this pass-book is between 96,000 and 97,000 pesos?

A. Yes, sir, that is right.

Q. The pass-book also shows that there was a check of 30,000 pesos honored and paid on the 31st of December, 1903, doesn't it?

A. Yes, sir.

Q. The memorandum or extract from which you testify as to the loan account shows that Martinez was indebted on the loan account to the sum of 9,000 pesos Mex. and \$13,000 gold on June 15th, 1903?

A. Yes, that is right, with interest from the date of the loan.

Q. The interest from the date of the loan would consist of interest on 9,000 pesos from May 29th, 1903 to June 15th, and on the \$13,000 gold, from June 3rd to June 15th?

A. That is right.

Q. So the interest would be a very insignificant sum?

A. That is right.

Q. So that according to these two extracts or memorandums from which you have testified the total obligation of Martinez to the Bank on June 15th, 1903, was not to exceed 134,000 pesos?

A. Yes, sir, 134,000 or 135,000 I think.

Q. Are you familiar with the instrument of June 15th, 1903, upon which action No. 3365 was brought?

A. I know that it existed, I do not know what you mean by being familiar.

13        Q. These memorandums which you have produced show no memorandum of that loan do they?

A. What loan?

Q. The loan included in the document of the 15th of June, 1903?

A. You will have to tell me what loan you refer to.

Q. Don't you know that the document of June 15th, 1903, purports to be a loan from the defendant in favor of the Bank?

A. Yes, but "loan" is a general term and applied to indebtedness is supposed to cover the indebtedness from the Bank at that time; what may be owing to the Bank at some future time, that is the way those things now read.

Q. State whether or not there is any record of that loan or record of that instrument in the Bank?

A. Yes, sir.

The COURT: What instrument?

A. The 158,000 pesos.

Mr. GIBBS:

Q. State whether you know of your own knowledge what accounts or items make up the 110,000 pesos included in that document of June 15th, 1903?

A. No, I have no personal knowledge of how they arrive at that amount.

Q. This memorandum of loans shows that you charged Martinez with interest on loan, doesn't it?

A. Yes, sir, the interest is charged up, every six months.

Q. Doesn't this pass-book show interest charged on this sum to loans on June 30th, 1903, an item of \$63.12 and \$153.86?

A. Yes, sir, perfectly legitimate.

Q. How do they happen to be charged in the loan account and also in the current account?

14 A. Well, as far as the transaction on June 30th is concerned, a check was received in payment of the interest and the interest should state here definitely it is from the 30th of June until the 31st of December, making it regularly six-monthly.

Q. So that your extract is not correct in that respect?

A. I won't say as to that, I will have to compare it and see.

Q. What rate of interest have you calculated on this loan account?

A. I would not like to state that, but I think it is 8%. I will look it up.

Q. You knew what rate was being charged at the time this calculation was made, didn't you, or did some one else make them for you?

A. No, the rate is running right down in the books; the general rate of interest of the Bank is 8%.

Q. Are there any promissory notes in your Bank signed by Martinez at this time?

A. You will have to ask our counsel for that; if there are any he holds them.

Q. When promissory notes are taken from a depositor, is he not given credit for those promissory notes in the Bank?

A. All depends on what condition they take them.

Q. You have not given Francisco Martinez credit in any of the books of the Bank, as shown by these extracts, for any notes, mortgages or sales with a right of repurchase, which he may have executed in favor of the Bank during all this period of time, have you?

A. No, sir, they are not a credit, they are in the form of security; when a man puts up security for a loan or overdraft, they are not placed to the credit of the account, unless the account becomes bad and they have to liquidate it and they realize on the security.

15 Mr. GIBBS: Limit yourself to the question.

Judge ODLIN: He has a right to explain his answers.

The COURT: I think so, unless it is a question calling for "yes" or "no."

Q. In your Bank when a note and a mortgage is given in payment of an account, do you cancel the account?



A. No, it is held as security for the account.

Q. Don't you ever take any notes or mortgages in payment of accounts of overdrafts and other obligations owed *owed* to your Bank which require security?

A. No, if you simply take a note, it simply transfers the indebtedness from one account to another, changes the form of the indebtedness; the custom is to take a demand note secured by mortgage.

Q. When you liquidate an obligation with one of your depositors or any other person with whom the Bank is dealing and take a note and mortgage, or a sale with right of repurchase in liquidation of that claim, do you still carry the claim as well as the note and mortgage or sale with right to redeem, against the party?

A. The sale with right to redeem is held as security against the indebtedness and that is the only form it appears in our books in as security; it appears that way in all the reports.

Q. Should not this loan on the steamers "Francisco" and "Germana" appear in the loan account of your books?

A. It does appear in the loan account of our books; it is closed out by that check which you will see there debited up to the current account; that is one of the questions you asked a while ago; that *was* one form of indebtedness changed to another form of indebtedness by check does not liquidate the indebtedness but changes the form from one form to another.

16 Mr. GIBBS: I would like you to confine your answers completely to the question. I ask the Court to strike out the portion of the answer which is not responsive to the question.

The COURT: I do not see anything wrong about the answer; that is just his understanding about it from the books.

WITNESS: I submitted a statement of loans outstanding at the present time on my books and he asked me if that appeared in the loan account; if I say no or yes he will want to know why it does not appear on there and it does not appear because as far as the books are concerned, it is closed out by the check we received in payment.

Mr. GIBBS: I might want to know it and I might not. I move to strike out the testimony of the witness referring to the current account for the reason that it is immaterial and irrelevant under the issues joined, showing that it is entirely separate and distinct from that sued on in the complaint. The document sued on being a public document for a fixed sum of money and not upon any unliquidated indebtedness, or upon any overdraft or account current but upon a written instrument which recites that it is based upon promissory notes and a few other items mentioned.

The COURT: The plaintiff must stand by the proof; if he does not establish the action, then the Bank cannot recover. Let the motion be overruled. If the testimony does not sustain the plaintiff's allegations in the complaint, it cannot recover.

Mr. GIBBS: Exception.

Q. By an examination of this pass-book, how many different check-books would you say had been used in issuing the *the* checks shown in this pass-book?

17 A. That is impossible to say at a rough calculation; we have different sized check-books, some contain as many as 900 checks; we could not tell what size check book was issued.

Q. Do you know how many check books were issued to defendant, Martinez?

A. I could not say without regard to the records.

Q. Will you be able to find out and let us know this afternoon?

A. Maybe, and maybe not; it is impossible to say.

Mr. GIBBS: I ask that the witness ascertain, if possible, in whose favor the check-books were issued upon which the checks other than those drawn from the check-book of Martinez were drawn.

The COURT: Can you furnish that information?

The WITNESS: I will endeavor to find it.

Mr. GIBBS:

Q. You keep a record of all check books issued?

A. Supposed to be, but in the rush in the Bank on Saturday morning those notes are most every week overlooked; it is impossible to guard against them.

Q. Isn't there a regulation of the Bank prohibiting the cashing of checks issued from check-books belonging to persons other than the depositor against whom the check is drawn?

A. The paying-teller is not supposed to know from whose book the check comes; same as the paying-teller in the States.

Q. Do you know whether any of these checks were drawn on the check books of Ricardo Regidor?

A. No such gentleman ever had any account with the Bank so far as I know; I never ran across his name in the books of the Bank.

18 Q. Do you know whether any of them were drawn on check books of Pedro Cantero?

A. Yes, sir, two of them were drawn on the check book of Mr. Cantero.

Q. Which are those?

A. No. 10161 and 10162, for 735 pesos Mex. each.

Q. Do you know whether any of them were drawn on the check book of Ázaola?

A. I do not know. Just a minute—there is one more check, No. 27280 on the check book of Cantero, amount of 5,000 pesos Mexican.

The COURT: On Martinez's account?

A. Yes, sir, check signed by Martinez but taken out of Cantero's check book.

Mr. GIBBS:

Q. The check was signed by Martinez, himself?

A. It does not say so here, but I presume it was.

Q. This check for 5,000 pesos which you say was drawn by Cantero is signed "por ausencia y P. P. de D. Francisco Martinez—Pedro Cantero." isn't it?

A. Yes, sir.

Q. Does the Bank hold any power of attorney from Francisco Martinez in favor of Pedro Cantero, authorizing him to sign checks?

A. I do not know.

Q. Any record of any such power of attorney in the Bank?

A. I do not know that either; it is a question I had not anticipated.

Q. Those two checks of 735 pesos each written on checks 19 of Cantero, by whom do they appear to be collected?

A. One bears the endorsement of Miguel Martin and the other Vicente G. Azaola.

Q. From that would you deduce that they had been paid to this gentleman?

A. I would, yes, sir.

Q. These three checks two of which were drawn on blanks of Cantero and the other signed by Cantero, as attorney in fact of Martinez, all bear the initials, do they not, of R. W. Brown?

A. Yes, sir.

Q. What is the date of the check No. 159728 which appears to have been paid, from your books, on the 31st of December?

A. Your number is wrong, it is 15972-S.

Q. Oh yes; what is the date of that check for 30,000 pesos?

A. 21st of June, 1903.

Q. That also bears the initials of R. W. Brown don't it?

A. Yes, sir.

Q. I call your attention — the check No. 24025 for 9,000 pesos; please state when that was paid?

A. February 28th it is entered in the book.

Q. And the date of it is February 16th?

A. Yes, sir.

Q. What is the endorsement through the centre?

A. Non-negotiable.

Q. To whom was that check paid?

A. It was not paid; it was in payment of an indebtedness, that is, the check could not be cashed, it is non-negotiable.

Q. Do you know what indebtedness was paid by that check?

A. I cannot say.

20 Q. The extracts which you have from the books do not show that fact, do they?

A. No, sir.

Q. Presumably it was to pay some indebtedness to the Bank?

A. Yes, sir, to the Bank.

Q. I wish you would take the pass-book from which you testified as to the overdraft for current account of Francisco Martinez and the original checks which you have, and compare them and state from an examination of the checks the date of each check corresponding to the numbers in the pass-book, and state by whom they are endorsed, and if oked by R. W. Brown and if not, by whom they are oked?

A. No. 24001, 3000 pesos, dated 20th of January, 1903, endorsed by E. Palanca; initialed by R. W. B., entered in the pass-book January 20, 1903.

No. 24003, 2,000 pesos, dated 20th of January, 1903, initialed by R. W. B.; endorsed, Francisco Martinez; entered in the pass-book same day.

No. 24002, 4,000 pesos Mex., dated 20th of January, initialed by R. W. B.; endorsed by Wiget & Neborhard; entered in the pass-book January 21; endorsed in pencil.

No. 24004, 2,000 pesos; dated 21st of January, initialed R. W. B.; endorsed by Francisco Martinez and entered in the pass-book January 21.

No. 24007, 1,000 pesos, dated 22nd of January, initialed by R. W. B.; endorsed by Francisco Martinez; Benito Robles; entered in the pass-book 22nd of January, 1903.

No. 24006, 2,000 pesos Mex., dated 22nd of January, initialed C. H.; no endorsement, entered in the book on 22nd of January.

No. 24005, 100 pesos Mex., dated January 22, initialed by R. W. B.; no endorsement; entered in the book same day.

21 No. 24009, 1,000 pesos Mex., dated 24th of January, initialed R. W. B., endorsed by Benito Robles; entered in the book 24th of January.

No. 24008, 600 pesos Mex., dated 23rd of January, initialed R. W. B., endorsed Strutman & Co.; entered in the book 24th of January.

No. 24010, 1500 pesos Mex., dated 26th of January, initialed R. W. B., endorsed by Benito Robles, entered in the book 26th of January.

No. 24011, 1,000 pesos Mex., initialed R. W. B., dated 30th of January; endorsed by Isidro Martinez, entered in the book January 30th.

No. 24012, 1500 pesos Mex., dated 31st of January, initialed R. W. B., endorsed by Francisco Martinez; entered in the book 31st of January.

No. 24015, 2,000 pesos Mex., dated 3rd of February, initialed R. W. B., endorsed by Francisco Martinez, entered in the book on the same day.

No. 24013, 2,000 pesos Mex., dated 2nd of February, initialed R. W. B., endorsed by Pilar Corrales; entered in the book February 3.

No. 24014, 1,000 pesos Mex., dated 2nd of February, initialed R. W. B., endorsed by Gregorio Ramos; entered in the book 3rd of February.

No. 24016, 3,000 pesos Mex., dated 3rd of February, initialed R. W. B., endorsed by Isidro Martinez; entered in the book 3rd of February.

No. 24017, 2,000 pesos Mex., dated 4th of February, initialed R. W. B.; endorsed by Francisco Martinez; entered in the book on 6th of February.

No. 24019, 1500 pesos Mex., dated 6th of February; initialed R. W. B.; endorsed by Francisco Martinez; entered in the book on 6th of February.

22 No. 24020, 3,000 pesos, dated 6th of February; initialed by R. W. B.; endorsed by Francisco Martinez; entered in the book on the 12th of February.

No. 24021, 3,000 pesos Mex., dated 7th of February, initialed by C. H.; endorsed by Francisco Martinez; entered in the book 14th of February.

No. 24023, 1,000 pesos Mex., dated 11th of February, initialed by R. W. B.; endorsed by Ricardo Regidor; entered in the book on the 16th of February.

No. 24022, 1,000 pesos Mex., dated 11th of February; initialed R. W. B.; endorsed by Ricardo Regidor; entered in the book 16th of February.

No. 24024, 1,000 pesos Mex., dated 11th of February, initialed by R. W. B., endorsed by Ricardo Regidor; entered in the book on the 16th of February.

No. 24026, 500 pesos Mex., dated 21st of February, initialed R. W. B.; endorsed by E. Harrien (?); entered in the book 24th of February.

No. 24018, 1500 pesos, dated 5th of February, initialed by R. W. B.; endorsed by Francisco Martinez; Cham Sanco; "recibi Ricardo Regidor;" entered in the book on February 26th.

No. 24028, 600 pesos Mex., dated February 28th, initialed R. W. B.; endorsed "recibi Martin Sandoroz (?)" entered in the book on the 28th.

No. 24025, 9,000 pesos Mex.; dated 16th of February, initialed by R. W. B.; no endorsement; entered in the book on 28th of February.

No. 24027, 3,000 pesos Mex., dated 28th of February; initialed by R. W. B.; endorsed by the "Casa Agencia de Empeños Manuel Matute" and entered in the book on March 3.

No. 24030, 200 pesos Mex., dated 9th of February; initialed R. W. B.; endorsed by Cayetano Nenop (?), entered in the book on March 9th.

No. 24033, 3,300 pesos; dated March 11th, initialed R. W. B. endorsed by F. A. Robinson; entered in the book on the 12th of March.

No. 24029, 5,000 pesos Mex., dated 8th of March; initialed R. W. B.; no endorsement; entered in the book on the 13th of March.

No. 24030, 5000 pesos Mex., dated 16th of March; initialed by R. W. B.; endorsed by Luisa Perez; entered in the book on March 17.

No. 24034 P3150.\*

No. 24032; 3,600 pesos; dated March 11th; initialed by R. W. B. endorsed Marciana Constantino y Lopez; entered in the book 31st of March.

No. 24035, 2500 pesos; dated 31st of March; initialed R. W. B. endorsed by Estrella del Norte; entered in the book on the 31st.

No. 24183, 128 pesos Mex. dated 8th of April; initialed by R. W. B.; endorsed "recibi Pedro Cantero"; entered in the book on the 8th of April.

No. 24036, 200 pesos Mex., dated 13th of April, initialed by R. W. B.; endorsed by A. de Jurando; entered in the book on the 13th of April.

No. 24041, 400 pesos Mex., dated — initialed by R. W. B.;

rsed by Pedro Cantero; entered in the book on the 23rd of  
l.  
No. 24038, 5,250 pesos; dated 21st of April; initialed by R. W. B.;  
rsed by Francisco Martinez and P. Blane, and also on the back  
appears to be apparently a rubricate without a signature.

2000\*

No. 24039, 3,000 pesos, dated April 21, initialed by R. W. B.;  
rsed by Francisco Martinez and Manuel Radirez; entered in  
the book 7th of May, 1930.

No. 24042, 5,000 pesos Mex., dated 20th of May; initialed  
by R. W. B.; endorsed by Vicente G. Azaola; entered in the  
book May 28th.

*debit Slip* of the Bank, dated 5th of June, initialed by R. W. B.  
ing the following: J. G. Garcia for account for escritura dated  
of June, 1903, as per account attached, 300 pesos"; entered in the  
book 5th of June.

No. 24037, 4,000 pesos Mex., dated April 20th; initialed by  
W. B.; endorsed by Jesus Papa, and what seems apparently to  
rubricate on the back without name; entered in the book —.

No. 15968, 1600 pesos Mex., dated 12th of June, initialed by  
W. B., endorsed by A. A. Montagne; entered in the book on  
June 12th.

No. 15970, 6400 pesos Mex., dated 15th of June, initialed R. W.  
endorsed Pedro Cantero; entered in the book 17th of June.

No. 24043, 1650 pesos, accepted by R. W. B.; endorsed by Fran-  
cisco Martinez, Tomas Ripolite, paid to Early & White by Isidro  
Martinez; Early & White, by Edw. H. White, one of the firm and  
has the chop of the American Bank, 1903; entered in the book 26th  
June.

No. 16039, 922.50 pesos, initialed R. W. B., dated — bears no  
endorsement except the chop of the Banco Espanol Filipino, payable  
to Luis R. Yangco; entered in the book 2nd of July.

No. 16043, dated 3rd of July, 1,000 pesos Mex., initialed by  
W. B. and endorsed "del Vapor Balien, Francisco Martinez";  
entered in the book July 3rd.

No. 16046, dated 15th of July, 375 pesos Mex., initialed by R. W.  
bears no endorsement and is chopped "account of Vicente G.  
Azaola"; entered in the book July 20.

No. 16045, 650 pesos, dated 15th of July, 1903; initialed  
by R. W. B.; bears no endorsement; chopped "C. C. a/c V. G.  
Azaola"; entered in the book on the 20th of July.

No. 17851, 1840 pesos Mex., dated 21st of July; initialed by  
W. B.; endorsed by Hilario Sunico Hermanos; entered in the  
book July 22.

No. 17852, 2500 pesos Mex., dated August 5th; initialed by  
W. B.; endorsed by Early & White by E. H. White, one of the  
firm, chop of American Bank; dated August 6th, 1903.

No. 10161, 735 pesos Mex., dated 3rd of August; initialed by  
W. B.; endorsed by Miguel Martin; entered in the book August  
5th.

\* In pencil in copy.]

No. 10162, 735 pesos Mex., dated 3rd of August; initialed by R. W. B.; endorsed by Miguel Martin; entered in the book September 26, 1903; also bears numbers on check on the back, 26—XI—1903.

No. 15972, 30,000 Mex.; dated 21st of June; initialed R. W. B. (across the face) "fixed loan"; bears no endorsement; entered in the book December 31, 1903.

*Debit Slip*, dated 29 of April, 1904, pagare discounted October 3/96; 3,000, pesos Mex., initialed by J. B. Lee; entered in the book on April 29, 1904.

Q. Who is the person whose initials "C. H." are found on these checks?

A. A gentleman by the name of Harvey in the Bank.

Q. Cashier of the Bank?

A. Yes, sir, now cashier of the Bank, yes, sir.

Q. The rules of your Bank require checks to be endorsed by the person who cashes them?

A. All order checks must be endorsed by the person who  
26 cashes them; all other checks must bear the signature of the man who draws it.

Q. Isn't it the rule, to require the person who cashes it to make the endorsement and be identified?

A. Not on a bearer check, no, sir.

Q. Always required to bear some signature?

A. All required to bear some endorsement, that is the rule of the Bank.

Q. In this loan account you mentioned some interest or some rents collected on the property; what property is that which you have in your possession upon which the Bank is collecting rents?

A. The one you refer to specifically there is the Calle Jaboneras property mentioned in the document.

Q. Do you answer the subpoena duces tecum served upon Mr. Martin as the manager of the Bank for the purpose of furnishing the documents and accounts therein required?

A. Yes, sir.

Q. Have you brought the account showing the income and rent from all the property and vessels called for in said subpoena?

A. I turned that over to Mr. Wolfson yesterday, I understood he was going to be asked the questions on that.

Q. So you are not prepared to give the testimony required in the subpoena duces tecum of Martin?

A. Not offhand. I can find out and give it to you later, if you wish. I have the thing all made up to date and it is no trouble to take it up.

Mr. GIBBS: That is all for the present; I want him to furnish the information asked for in the subpoena duces tecum and also with reference to the persons to whom the checks shown in this pass-book were issued, the check books.

Redirect examination by Judge ODLIN:

Q. Will you please explain more in detail in regard to that check 30,000 pesos which was mentioned by you in your cross-examination?

Mr. GIBBS: Objected to as improper re-direct examination and for further reason that the evidence of this witness and the memorandum upon which he bases his evidence, show that the 30,000 check have no reference whatever to the indebtedness or alleged indebtedness upon which this suit is based.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. The check of 30,000 pesos dated 21st of June, 1903, was entered in the books on December 31st, was given as security for the loan we made against the steamship "Germana" which loan was not repaid, and at the expiration of the loan the check was passed to the credit of the account, simply changing the form of the indebtedness from a loan to the overdraft account.

Mr. GALE: I move to strike out the testimony of the witness on the ground that there is no foundation laid for its admission and the witness has already testified he has no other knowledge than that contained in the pass-book or contained in the extracts exhibited here.

The COURT: Objection and motion overruled.

Mr. GALE: Exception.

Q. The defendant in this case, Francisco Martinez, in his answer states that the International Banking Corporation is seeking to collect 60,000 pesos twice from Francisco Martinez, first by the fact that the 30,000 pesos was loaned to him on the steamer "Germana" and then the 30,000 pesos was charged up in the current account; is it true or false that the Bank is trying to collect that amount twice?

Mr. GALE: Objected to as leading and suggestive and calling for the conclusion of the witness and not for a fact.

The COURT: Objection sustained.

Judge ODLIN: Exception.

Q. With regard to the "Germana" transaction, does the Bank claim from Francisco Martinez 30,000 pesos or 60,000?

A. 30,000 pesos.

Q. And that indebtedness of 30,000 pesos refers to the same matter as this check that has been under discussion?

A. Yes, sir.

Q. With regard to those checks you have testified about, how many do you find that were not signed by Francisco Martinez personally?

A. One I remember so far as I recollect.

Q. And who wrote the name of Francisco Martinez on that check?

A. I do not know the handwriting.

Judge ODLIN: That is all.



Cross-examination by Mr. GIBBS:

Q. Was that check for 30,000 pesos, dated the 21st of June, cashed the 31st of December, 1903, given in payment of the obligation secured by the steamers "Francisco" and "Germana" mentioned in Exhibit "A" to case No. 3363?

Judge ODLIN: Objected to as it calls for a question of law and not for a fact.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. Yes, sir.

Q. Do you know of your own knowledge why suit was brought on that obligation after its payment?

A. Because the obligation was simply changed in form.

29 Q. You have sued on the same obligation in both cases. have you not, Cases Nos. 3363 and 3365?

A. You will have to ask our lawyer about that.

The COURT: What do you mean by "changing the form of indebtedness"?

A. It simply appears in the books, instead of appearing on the books in the form of a loan, the giving of the check in payment of the loan, changes the form of indebtedness into the form of an overdraft; it takes it out of one book and places it in another under another head; simply changes the form in which the obligation appears in our book. When we change the loan to an overdraft, we have your check as a voucher for the amount, as well as the security we previously had.

Q. You do not know anything about where the promissory notes mentioned in Exhibit "A" to 3365 amounting to 110,000 pesos are, do you?

A. No, sir, never saw them.

Q. You do not know whether they are in the Bank or not do you?

A. No, sir.

Q. You do not claim the right to collect the 30,000 pesos on Exhibit "A" to Case No. 3363 and also on Exhibit "A" to Case No. 3365, those two escrituras including the same obligation of 30,000 pesos?

A. It makes no difference to us on what claim we make it; we only wanted it once; that is all we want.

PEDRO CANTERO, called as a witness for the plaintiff, was sworn in Spanish by the Clerk, Mr. Heras, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

30 A. Pedro Cantero, Attorney at law, but not practicing, live at No. 241 Calle Palacio, Manila.

Q. Were you served with a subpoena duces tecum in this case?

A. Yes, sir.

Q. Have you brought with you the document called for in that subpoena?

A. I was only required to present to the Court the power of attorney.

Q. Have you done that?

A. Yes, sir.

Q. Please let me see it?

A. Here it is (presenting document).

Q. I will show you a check which has been already discussed in evidence and ask you who signed it, same being No. 27280?

A. I did.

Q. Did you sign that check in accordance with this power of attorney?

Mr. GIBBS: Objected to as calling for the conclusion of the witness.

Q. Why did you sign the name of Francisco Martinez to that check?

Mr. GIBBS: Objected to as the power of attorney has been produced.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. Because I was so ordered by Ricardo Regidor and Francisco Martinez in the presence of each other.

Q. Do you know Luisa Perez?

A. No, sir.

Q. Then you do not know anything about the payment of this check?

A. Yes, sir, something.

Q. You do not know Luisa Perez?

A. No, sir, I do not know her, but I know something of the reason why this check was paid and the application of it. If you want to know about it, I can explain.

Q. Do you know of your own knowledge who received the money from the Bank?

A. I handed this check to Mr. Regidor and Mr. Regidor in turn delivered the check to a gentleman at the door of the Bank and we went to the bank; it was for the purchase of a promissory note for gambling; Don Ricardo, Don Francisco and myself went to the bank; Don Francisco Martinez and myself remained at the door and Don Ricardo Regidor went into the Bank and talked to Mr. Brown; it was about half-past 12 or 1 o'clock when Mr. Regidor came out and told Mr. Martinez that the matter was settled and "You can leave" because he was going to Balien that afternoon, "Give an order to Mr. Cantero to sign that check of 5,000 pesos and Mr. Brown will not object to paying it and then you can leave." I then drew up the check on the check-book and then put the signature which Mr. Regidor told me, and delivered the check to Mr. Regidor. Then Mr. Regidor gave this check to a gentleman at the door, whom I do not know, and that gentleman in exchange for the check, gave to Mr. Regidor another check of 2,000 pesos against the Chartered Bank which said check was cashed in the Chartered Bank the same day and

that gentleman, I suppose, sent some one of his family who was outside, to have the check cashed. At first I objected to sign the check, because the power of attorney I had did not authorize me to do it, but in view of the fact that Mr. Regidor told me that Mr. Brown had already given orders to pay it and that Mr. Martinez confirmed that order, I did not object any further to signing it.

32 Judge ODLIN: I offer the power of attorney in evidence as Plaintiff's Exhibit "B."

The COURT: There being no objections, let it be admitted and so marked.

Judge ODLIN: That is all.

Cross-examination by Mr. Gibbs:

Q. How long have you known Ricardo Regidor?

A. I knew him in Spain for five years.

Q. How long do you know him in Manila?

A. I arrived here two months after he arrived, I arrived in Manila in November, 1902, at his house.

Q. From the time you arrived in 1902, and until the death of Ricardo Regidor, isn't it a fact that you were in his employment?

A. Yes, sir.

Q. And during all that time you resided with Ricardo Regidor?

A. Yes, sir, I was acting as his private secretary.

Q. And you were his private secretary at the time you held this power of attorney from Francisco Martinez?

Z. Yes, sir.

Q. Do you remember approximately the time when the account was opened by the Bank in favor of Francisco Martinez, the defendant, that is in the Bank upon which this check is drawn about which you have just testified?

Judge ODLIN: Objected to as improper cross-examination.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I think it was about the 30th of January, 1903.

Q. Isn't it true that that account was opened by the giving of a promissory note of 30,000 pesos?

A. Yes, sir.

33 Q. Calling your attention to defendant's Exhibit 1 for identification, I will ask you to state whether or not that is the promissory note with which the account was opened?

A. I remember that on this day there were two promissory notes each for 30,000 pesos.

Q. Both in favor of the plaintiff banking corporation?

A. Yes, sir, one signed by Francisco Martinez and the other by him and his wife.

Q. Both delivered to the bank?

A. I do not remember; Mr. Regidor took charge of the same and he made Mr. Martinez believe that one of the promissory notes was torn up and then he, in the presence of Martinez, tore off the signature of Martinez to make him believe it and a few days afterwards

made him sign the same document again. This promissory note was drawn by Mr. Brown (referring to Exhibit 1).

Q. The handwriting in the body of it is in the handwriting of Mr. Brown isn't it?

A. Yes, sir, and it is on a blank promissory note furnished by the bank.

Q. What was the amount of the credit opened in favor of Francisco Martinez at the time these two promissory notes of 30,000 pesos each were given?

A. There was an account of 30,000 pesos only. Mr. Martinez wrote a letter to the Bank, certified by Mr. McMicking, and in which he stated that in order to secure this loan he promised to mortgage and transfer his property.

Q. Do you know who dictated or wrote that letter?

A. Mr. Regidor; I kept the rough draft of it.

Q. Is that rough draft you speak of for the credit of 30,000 or the credit of 80,000 pesos, or both?

A. I do not remember at this moment. I will have to look at my notes.

Q. I call your attention to paper marked Defendant's Exhibit 2 for identification and ask you to state if this is the rough draft of the letter written by you at Regidor's dictation or by Regidor, himself?

A. This is the rough draft.

Q. Do you remember in what form the document sworn to before McMicking was: was it in typewriting or in what manner?

A. I think it was typewritten. I am not sure. I remember there were two promissory notes, one for 30,000 pesos and the other for 80,000 pesos and I do not remember which one was first; seems to me that the first was 30,000. This letter was dictated by Mr. Regidor and correct- by him in his own handwriting (referring to Exhibit 2).

Q. In whose handwriting is that rough draft?

A. Mine, dictated by Regidor and some corrections therein made by Regidor; it was typewritten and signed. Speaking of that letter, I said it was sworn to before McMicking, but I rectify myself now by saying that I may have taken that document for another letter which I have here (referring to letter dated the 7th of February, 1903).

Adjourned until 2:30 P. M.

Proceedings Held 2:30 p. m.

Same appearances.

Witness CANTERO on the stand.

Cross-examination continued by Mr. GIBBS:

Q. You spoke of a document executed before Mr. McMicking, saying that you might have confused the letter in reference to the credit of Martinez with that document. I now call your attention to a document of the 7th of February 1903, marked Defendant's Exhibit 3 for identification, signed by Francisco Martinez, and sworn to before McMicking and will ask you if that is the document you

35 had in mind at the time you said that you believed the document in reference to the credit had been sworn to before McMicking?

A. Yes, sir.

Q. Returning again to the check drawn by yourself for Martinez please state to the Court what that check was given for?

A. That check as I have already stated, I believe it was to buy a promissory note for gambling.

Judge ODLIN: I move to strike out the answer as incompetent.

Mr. GIBBS: This is cross-examination and I expect to show by the witness what the note was and how much was discounted.

The COURT: If you expect to go along and show that, proceed; the statement of the witness in itself is worthless. Let the motion be overruled, for the present.

Judge ODLIN: Exception.

Q. State as near as you can remember, to purchase what note this check for 5,000 pesos was given?

Judge ODLIN: Objected to as witness has already testified upon his belief as to the transaction and it is not competent to ask him questions regarding the facts.

The COURT: I think it is competent to find out what he knows; of course his belief is not competent.

Judge ODLIN: Exception.

Q. Don't you know that this check for 5,000 pesos was given to purchase a promissory note for gambling, given for a gambling debt?

A. May I state all I know of the matter?

The COURT: Yes?

A. When the credit was opened in favor of Don Francisco Martinez, the chief object of that account was to invest this money in the purchase of promissory notes; by this means it was desired by Mr. Martinez to secure same in the way most favorable to his interests; some of the promissory notes were gathered by Mr. Regidor  
36 because I did not want to make use of this power of attorney, or authority; Mr. Regidor was furnished with a list of the promissory notes in circulation in Manila. He called Martinez and told the latter that the notes could be obtained at a moderate price; as I did not like to make use of the authority, Mr. Regidor required Martinez to sign the checks for the purchase of these pagares. Some of these I understand were placed in the check at a price greater than they were really purchased for.

Judge ODLIN: Object to the latter part as hearsay.

Mr. GIBBS: The translation is wrong; he said "Some of them I understand were purchased by making Martinez believe that he was securing them at one price, whereas he got them at a much lower price."

The COURT: What the witness understands about it is not competent.

Q. These various operations and conversations had with Martinez relative to these checks and promissory notes is it not a fact that you

were present and heard and know about what took place between Martinez and Regidor?

Mr. ODLIN: Objected to because whatever took place between Martinez and Regidor could not in any way affect the International Banking Corporation.

Mr. GALE: We will connect it with the plaintiff.

The COURT: Unless you connect the Bank with it, it is not competent.

Judge ODLIN: Exception.

A. In many of them I was present, yes, sir, and besides I have the vouchers of all these, they were stolen from my trunk by Mr. Gallegos and they must be now in the Prosecuting Attorney's office.

Q. When were those various documents and vouchers in connection with the Martinez transactions taken away by Gallegos?

A. All these documents and vouchers were kept in a safe under lock and Mr. Regidor had the key of the safe; when the process for the prodigality of Martinez was brought, these papers were kept in my trunk and they were taken to the house of Vicente Azaola; there the documents remained for sometime, then they were taken to the house of Vergarda, brother-in-law of Florentino Flores, after that the documents were taken back to my house and they were in my room which was also occupied by Gallegos; on the 30th of June, 1904, Mr. Gallegos took that trunk away; I heard that this trunk was taken to the office of Pillsbury & Sutro.

Q. Do you know what became of it after that?

A. Undoubtedly this trunk was broken open in their place because I have the key here myself.

Q. Just state generally, without specifying the particular documents, what kind of documents and escrituras, if any, were contained in that trunk of yours in connection with the Martinez transaction with the Bank?

A. All the documents concerning Martinez' case with the Bank in duplicate, triplicate and quadruplicate and also documents signed in blank; I learned afterwards that those documents were presented to the Prosecuting Attorney's office.

Q. By whom were these documents signed in blank?

A. Concerning Brown and Martinez.

Q. You may state if you know, in the purchase of what gambling promissory note this check for 5,000 pesos was given, the check signed by you?

Judge ODLIN: Objected to as witness has testified that he "believes" certain facts concerning that check and his answer indicates he has no knowledge on the subject.

Mr. GIBBS: I will ask another.

38 Q. Don't you know that this check was given in payment of a promissory note issued in favor of one, Del Rosario?

Judge ODLIN: Objected to as witness has already testified as to his "belief" as to this matter.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. There was a promissory note of about 14,000 pesos in favor of Tomas del Rosario, the present Governor of Bataan; this promissory note was endorsed or acquired by Don Jose Basa and this promissory note was purchased by my check of 3,000 pesos and afterwards I understand that this promissory note was charged in full.

The COURT: State only what you know; what you "understand" is not competent.

WITNESS: If I had the documents which are now in the Prosecuting Attorney's office, I should be able to state for certain the amount, because they are the documents referred to in this transaction; I should state that these promissory notes were paid in the first place at a smaller price and charged at the full price by the Bank; and when this question of the prodigality of Mr. Martinez came up, Mr. Regidor retired from the Bank these pagares and went there to get them by order of Mr. Regidor; I cannot say as to whether the Bank has carried on any former operation in regard to these promissory notes, although I remember that among the documents I had in my possession there was a letter of Mr. Regidor to Mr. Brown asking what application was made of this check of 30,000 pesos.

Q. State whether or not this letter marked Defendant's Exhibit 4 is the letter to which you have referred written by Regidor to Mr. Brown and replied to by him relative to the application of this check in the books of the Bank of 30,000 pesos?

39 A. I think this is one of them, I think it was in the Prosecuting Attorney's office.

Q. Whose handwriting is this letter in, Exhibit 4?

A. Regidor's and answered by Brown.

Q. Is it in the handwriting of Regidor and Brown?

A. Yes, sir.

Q. R. W. Brown of the International Banking Corporation or you mean?

A. Yes, sir.

Q. I call your attention to documents marked Defendant's Exhibits 5 to 14, inclusive, and ask you to state whether or not these were part of the papers which you had in your trunk and which you said were taken from you and carried away by Martinez Gallegos?

A. Yes, sir, they are.

Q. Please recite to the Court the history of each one of these documents?

Judge ODLIN: Objected to as I would like to see them before they are presented to the witness and questions asked.

Mr. GIBBS: Question withdrawn.

Q. Please state by whom or whose signatures are attached to the documents marked Defendant's Exhibits 5 to 12 and as to those which bear no signature, by whom they were prepared and for what purpose?

Judge ODLIN: Objected to for the reason that it groups too many

documents together, signed by different persons and some, not at all signed. Let the documents be presented one at a time.

The COURT: That is the better way.

Q. Calling your attention to Defendant's Exhibit 5, dated the 2nd of April, 1903, directed to the Agent of the International Banking Corporation, please state to the Court, if you know, the signature attached thereto?

A. By Francisco Martinez.

Q. You are familiar with his signature are you?

A. Yes, sir, it was signed in my presence.

Q. State to the Court, if you know, who prepared that document?

A. This was drafted by Mr. Regidor and written by me on the typewriter.

Q. I call your attention to defendant's Exhibit 6, purporting to be a promissory note of 27,000 pesos in favor of the International Banking Corporation and ask you, if you know, the signature attached thereto?

A. Don Francisco Martinez.

Q. I call your attention to Defendant's Exhibit 7 dated April 2nd, 1903, purporting to be a promissory note of 3,000 pesos and ask you to state whose signature is attached to that promissory note?

A. Francisco Martinez.

Q. Calling your attention to Defendant's Exhibit 8, purporting to be a letter dated May 2nd, 1903, directed to Robert W. Brown, Agent of the International Banking Corporation, and ask you to state by whom that letter is signed?

A. Signed by Martinez and sworn to before Eduardo Gutierrez.

Q. Call your attention to Exhibit 9, purporting to be a letter dated April 21, 1903, directed to Brown as Agent of the International Banking Corporation and ask you to state by whom that document is signed?

A. By Francisco Martinez.

Q. And this document, dated April 21, 1902, Defendant's Exhibit 10, directed to Senor Brown, by whom was that document prepared?

41 A. By Mr. Regidor on the same day of the escritura and former letter, Exhibit 9; Exhibit 10 accompanied the Exhibit 9; I took it to the Bank myself.

Q. State what defendant's Exhibit 11 is and by whom it is signed?

A. Exhibit 11 is a document executed by Mr. Martinez in favor of the Bank, mortgaging the steamers "Francisco" and "Germana" as security for the promissory note of 30,000 pesos; that is the extension of that document.

Q. You say document marked Defendant's Exhibit 12 is an extension of Exhibit 11?

Judge ODLIN: Objected to as calling for the opinion of the witness.

The COURT: Objection sustained.

Mr. GIBBS: Exception.



Q. By whom was this document Exhibit 12 prepared?

A. Mr. Regidor; Mr. Francisco Martinez issued the two promissory notes, 27,000 pesos and 3,000 pesos, respectively and upon this promissory note this document of mortgage on the "Don Francisco" and "Germana" was made. These 30,000 pesos included in the escritura on the "Francisco" and "Germana" served to cover the promissory notes in favor of Del Rosario and Mascunana referred to in the letter of Regidor to Brown and answer of Brown to Regidor.

Q. Referring to the words in pencil at the top of this Exhibit 12 "Germana" and "23 of December, 1903," you may state in whose handwriting those notations are made, if you know?

A. By Regidor.

Q. What use was made of Defendant's Exhibit 12; what was done with it?

42 Judge ODLIN: Objected to because the document is not signed by any person and there is no evidence it was ever delivered to any person.

Mr. GIBBS: Question withdrawn; I am going to prove that.

Q. You may state whether or not this document, Exhibit 12, after being prepared, was delivered to R. W. Brown, the manager of the International Banking Corporation?

A. Mr. Brown was at the house at the time and in order that he might have a memorandum of the inversion of the money the note was made of that transaction and he was given a copy of it.

Q. At whose house was Mr. Brown at the time he took a copy of this memorandum?

A. The house of Mr. Regidor.

Q. In whose handwriting, if you know, is this promissory note marked Defendant's Exhibit 6 for 27,000 pesos?

A. Nine.

Q. Referring to Defendant's Exhibits 5, 7, 8, 9, 10, 11, and 12, all in typewriting, please state who did the writing and who, if any one, dictated them?

A. In these matters only myself and Regidor took part and I wrote these on the machine.

Q. Who dictated them?

A. Mr. Regidor. I simply wrote the documents on the typewriter did not do anything else.

Q. Upon whose order or dictation did you write the promissory note Exhibit 6?

A. Mr. Regidor.

Q. State if you know, who delivered the blank for this promissory note of 27,000 pesos, Exhibit 6, where did it come from?

43 A. Mr. Brown gave us this blank.

Q. Did he give you just this blank or a number of them?

A. We had a series of blanks there, about 25 or 30 from Mr. Brown.

Q. For what purpose were those blank promissory notes furnished Mr. Regidor by Mr. Brown, if you know?

Judge ODLIN: Objected to as immaterial.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I cannot tell you, I suppose it was to write notes on them.

Q. Don't you know that they were given you for the purpose of extending promissory notes on that might be secured from Francisco Martinez?

Judge ODLIN: Objected to as unfair cross-examination.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I suppose that is the object because they were only just for the purpose of taking promissory notes from Mr. Martinez.

Q. Please state to the Court, if you know, in what manner and about what time Mr. Regidor and yourself became interested in affairs of Martinez and what were the circumstances?

A. Previous to this question Mr. Regidor had connection with Mr. Brown; they had transactions of discounting pagares, which they had with other individuals; at that time I believe a Chinaman, whose name I do not remember just now, came to the Bank asking for a credit in favor of Mr. Martinez and Mr. Brown ordered Mr. Regidor to investigate who Martinez was and Regidor made that investigation and finding the circumstances were satisfactory, Mr. Regidor placed himself in relations with Mr. Martinez.

44 Q. What do you mean by "finding the circumstances satisfactory" on making investigation?

A. That he was a man who had property and was responsible.

Q. Referring to the purchase of gambling notes, about which you have testified heretofore, state to the Court in what manner the notes were purchased and realized upon by the various holders thereof in the International Bank?

Judge ODLIN: Objected to as there is no evidence of any notes being given for gambling; there is no direct evidence in the case of any gambling.

The COURT: Ask the witness to specify any notes he knows of his own knowledge were for gambling debts.

Q. After the investigation which Mr. Regidor made at Mr. Brown's request as stated by you, what were the first relations between Regidor and Martinez and state just what took place with reference to his account in the International Bank?

A. Mr. Regidor told Martinez to address a letter to the Bank asking for credit and that the Bank would open a credit in his favor, whether it was 80,000 pesos or 30,000 pesos, I do not remember which was first, I do not remember quite well whether it was 80,000 pesos to be completed with 30,000 pesos or 30,000 pesos with 80,000 pesos afterwards. That promissory note was accompanied by a letter dictated by Mr. Regidor and a copy of it was among my papers in which letter it was stated that he promised to mortgage his houses in security of that credit.

Q. State to the Court what was the date approximately of the facts that you have related?

45 A. It was between the end of January, 1903, and the beginning of February of the same year.

Q. What was the condition, if you know, of Mr. Martinez at that time, mentally?

A. I considered him incapacitated because he signed every document that was presented to him.

Q. Do you know whether in signing these documents Martinez knew their contents or not?

A. Of many of them he did not know the contents, I can cite as an example, my power of attorney of which he did not have any knowledge until a long time afterwards, for that reason I did not want to make use of it when it was given to me. At that time Mr. Martinez was hard up for money and he signed everything presented to him when he was given money.

Q. Referring again to the check of 5,000 pesos signed by you for Martinez, state to the Court how it happened that Martinez being present he did not sign the check himself?

A. I do not know, perhaps it was because he did not have a book, but he had me sign the check and he has a good memory and he would remember the check he signed.

Q. Isn't it a fact that you have already stated that Martinez was present with Regidor in the Bank at the time this check was signed with you?

A. Yes, sir.

Q. Isn't it a fact that check was signed in the presence of Mr. Martinez?

A. Martinez after giving me the authority, left, and the man was there at the door to collect the check.

Q. Why didn't you have him sign the check before he left, if he was willing to sign it?

46 A. I do not know why. Mr. Regidor told Martinez that he could go away without fear and that I would sign the check and Mr. Brown would pay it and Mr. Martinez authorized me.

Q. Didn't you have a check book in your pocket at that time from which you took the blank upon which this check was extended?

A. At that time when-er I went with Regidor I had a check book with me.

Q. Was there any reason you know of why Martinez could not sign a check taken from your blank check book?

A. I do not know.

Q. That is the best reason you can give why you signed that check, instead of Martinez at that time?

A. Yes, sir, because Martinez authorized me to.

Q. Isn't it a fact that Martinez refused to sign that check and that you then were required to and did sign it by orders of Senor Regidor?

A. No, Mr. Martinez did not refuse to, only Mr. Regidor told Martinez he could go away and he authorized me to sign the check and Mr. Brown was ready and willing to pay the check; if he refused to sign he would not have authorized me.

Q. How did you happen to consent to sign this check knowing that Martinez was mentally incapacitated?

A. Because at that time he was not legally incapacitated, otherwise no transaction would have been made.

Q. But there were some other transactions made, were there not, after he was legally incapacitated?

Judge ODLIN: Objected to as immaterial.

The COURT: Objection sustained.

Q. You have stated that for the reason that he was not legally incapacitated that you went on transacting business with him and that you would not have done so, after he was declared to be incapacitated. I will ask you if it is not a fact that after Martinez was declared incompetent by this Court that yourself and Regidor and Brown continued doing business with Martinez the same as before, to some extent at least?

Judge ODLIN: Objected to; there is nothing in this case based upon any transactions of that kind.

Mr. GIBBS: We will show that this document was executed to carry out the document of the 15th of June and that after being signed, after the date of the declaration of incompetency, that they attempted to date it back and that Brown joined in that attempt.

The COURT: Date what back?

Mr. GIBBS: Date back the document so it would be binding, for the purpose of carrying out their fraudulent scheme and including large amount of subsequent obligations, among which was this \$1,000 pesos check; we have alleged it specifically in our answer; we have alleged the execution of this document on the 12th of January, 1904, and the attempt on the part of the conspirators to antedate it back to the time when your Honor declared the incompetency of Martinez.

The COURT: Do you expect to show it by this witness?

Mr. GIBBS: Yes, sir, and it also goes to the credibility of the witness.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I did not have any business; Mr. Brown and Mr. Regidor, possibly have done so.

Q. I call your attention to the document marked Exhibit "A" and attached to the answer of defendant in case No. 3365, and ask you to state if this document was not written up by you on the typewriter at the dictation of Don Ricardo Regidor?

A. Yes, sir.

Q. Then you are mistaken about not having participated in any transaction with the defendant, Martinez, after the declaration of prodigality?

A. I did not have any participation, but Mr. Brown and Mr. Regidor; I made the document, the date of which I do not remember.

Q. You do remember now that you prepared this document on the typewriter?

A. Yes, sir, not only in that one, but several others.

The COURT: What is the date of that document?

A. 12th of February, 1904.

Q. How many duplicates or how many copies of this document were prepared at that time?

A. Three.

Q. Call your attention to these three sheets bearing the number "13," dated the 7th of November, 1903, marked Defendant's Exhibits 13, 14 and 15 and ask you to state what they are?

A. These are loose sheets of the document which were prepared to accompany the document which is attached to the answer in the case as I have testified and as your Honor knows, on the 15th of June, 1903, which was a document executed between Martinez and the Bank in which Martinez obligated himself to sell to the Bank all the properties that were adjudicated to him in the partition. The steamer "Germana" and the properties belonging to him in Balayan, Batangas, and the Bank in its turn obligated itself to transfer to Pedro Martinez the half of the property which was adjudicated to him. It was signed in blank by Mr. Brown on the 7th of November and we agreed to get Mr. Martinez's signature when he came to the house to this escritura, but this escritura never took effect because it was necessary to make some alterations in it and it remained signed in blank by Mr. Brown alone.

Q. Isn't it a fact that after this document, Exhibit "A" attached to the answer in this case had been signed in February, 1904, that these loose sheets were prepared with the intention and for the purpose of falsifying that document by substituting this page 13 in it?

A. There was a document made dated the 12th of February, which is one presented here and three copies of which were signed and subscribed before the notary public, Manuel Torres. This date was placed because it was thought the Supreme Court would revoke the decision against Martinez and then when they found that the document was of no value, they tore out the page which I believe was page 13. Please let me see the document.

Q. Handing the witness two documents, Defendant's Exhibit 16, which is the duplicate with the exception of the 13th page torn out of Exhibit "A" attached to the answer, I will ask you to state if that is one of the documents from which page 13 was torn out?

A. Yes, sir, this is the document signed on the 12th of February, as it was found; he was still incapacitated and did not have any authority to execute a document; the page on which that signature of the parties and witnesses was torn out and a dozen more of that page were made, some of them dated November, 1903, and those not serving, some simply "1903" and some of them entirely in blank and some in 1904.

Q. I call your attention to seven more loose sheets numbered page "13" marked Defendant's Exhibits 17 to 23, inclusive, and ask you to state if those sheets marked 17 to 23 are some of those dozen loose sheets to which you referred?

A. Yes, sir.

Q. State whether or not those documents just identified, the three

signed by Brown in blank and these loose seven were among the Martinez documents which you stated you had in your trunk?

A. Yes, sir, they are.

Q. State whether or not these loose seven sheets, only one of which bears the signature of Brown, were prepared with his knowledge and consent?

A. They were written with my knowledge, but not with my consent.

Q. I am asking if it was done with the consent and knowledge of Mr. Brown?

A. Yes, sir.

Q. Were you present at the time it was agreed between Mr. Brown and Mr. Regidor that these loose sheets should be signed up?

A. Yes, sir. Mr. Brown had great interest that these documents should be finished, because he was one of those who had interest in the adjudication of the property because by means of this document the Bank was completely guaranteed and all the promissory notes and the history of the case disappeared, because I remember that in reference to the escritura of the 15th of June, 1903, Francisco Martinez was deceived into signing because they made him believe that the document was to secure the payment of the sum of \$13,000 gold for the veradero and which he had already paid in a check of 30,000 pesos to Regidor and in that escritura the 15th of June, 1903, Martinez also acknowledges that he is in debt for the payment of 9,000 pesos on account of an escritura on property in favor of one, Legaspi, and which 9,000 pesos had already been paid in a check  
51 given to Regidor with which to redeem this property and which was not applied for that purpose.

Q. You spoke of a check for 30,000 pesos given to Regidor to whom was that check made payable?

A. I remember that one day in my presence he told Martinez to sign a check for 30,000 pesos. I do not know whether he made it to the order of Regidor or not, in blank or to bearer. That which I do remember is that Regidor dictated to me a receipt to Martinez for that check in which receipt it was stated that it was to be paid into his account.

Q. I call your attention to a receipt dated the 23rd of June, 1903, marked Defendant's Exhibit 24 and ask you to state whether that is the receipt to which you referred in your last answer?

A. Yes, sir, it is.

Adjourned until March 2nd, 1906.

(The testimony of this witness was continued, owing to illness until March 8th, 1906, when he was again placed on the stand for further cross-examination.)

By Mr. GIBBS:

Q. I call your attention to Defendant's Exhibit 10 and ask you to state who, if you know, prepared that document?

A. Mr. Regidor prepared it.

Q. Who did the writing?

A. I wrote it on the typewriter.

Q. What was done with it after it was written?

A. This is a copy of the original sent to Mr. Brown, we always kept a copy of every letter.

Q. What did you do with it after it was written?

A. Sent it to Mr. Brown.

Q. Was the original signed before it was sent to Mr. Brown?

52 A. Yes, sir.

Q. Do you know where the original is?

A. I left it at the Bank.

Mr. GIBBS: We give the attorneys for the plaintiff notice to produce the original or we will claim the right to introduce the copy in evidence.

Judge OBLIN: I will admit that this will have the same force as the original would have; I am willing to stipulate that that copy is the same value as the original would have. I have no doubt the document was sent to the Bank, the witness says it was, but I am not willing to swear it is not in the Bank, still I can state it is not in the Bank.

Q. I call your attention to letter marked Defendant's Exhibit- 47, 48, 49, 50, 51 and 52, and ask you to state in whose handwriting each one is?

A. Exhibit 47 is addressed to me, but it was really intended for Mr. Regidor; it is signed by J. Duenas; Exhibit 48 is signed by Ramon Lontoc, addressed to me and intended for Mr. Regidor; Exhibit 49 is signed by Duenas in the same way as the previous, addressed to me and intended for Regidor. Exhibit 50 is signed by Lontoc, addressed to me and intended for Don Ricardo Regidor; Exhibit 51 is signed by Duenas, addressed to me and intended for Mr. Regidor; Exhibit 52 is not signed, but it seems to me of Mr. Duenas.

Q. I call your attention to Defendant's Exhibits 53, 54 and 55 and ask you to explain to the Court what they are?

A. These were the result of an operation which Regidor had with the Bank negotiating a promissory note of Don Francisco Martinez;

this was a promissory note of 20,000 pesos to the order of  
53 Juan de la Luz; this promissory note was given to Julio

Danon in guarantee of a *cinetograph* which he was to bring. Mr. Danon had a conversation with Mr. Regidor and this promissory note was taken to the Bank, the amount of which I do not know, but 8,000 pesos was placed to the credit of Lorenzo del Rosario and 12,000 pesos to the credit of Danon, or vice versa. This letter, Exhibit 53, is a rough draft written in the handwriting of Mr. Regidor, addressed to Mr. Danon the original of which was to be signed by Lorenzo del Rosario. Exhibit 54 is a memorandum of Mr. Brown, although it is not signed, but I am sure it is in the handwriting of him, and is an extension of the previous letter. It was written by Mr. Brown to Mr. Regidor. Exhibit 55 is a rough draft written in the handwriting of Mr. Regidor and addressed to Julio Danon, the original of which was to be signed by Ramon Muscanana; this is a result of the previous letter. The 12,000 pesos in the shape of a promissory note which was credited to del Rosario



was not paid at its maturity and then Lorenzo del Rosario protested the note and the first letter was addressed to Danon in accordance with an understanding with del Rosario who had transferred the document to Muscunana. Exhibit 55 it appears that Muscunana directs himself to Danon, demanding the payment as owner of the document.

Q. Do you know what the origin of this obligation of 20,250 pesos was?

A. A pagare of Don Francisco Martinez to Juan de la Luz.

Q. Do you know why it was given?

A. Only by hearsay.

Q. I call your attention to document of the 15th of June, 1903 offered in evidence by the plaintiff and marked, Exhibit "C" and ask you to state if this is the original document executed by the defendant?

A. It is the original.

Q. Do you know when these marks and checks of lead-pencil were put on it?

A. I think I put down those pencil marks when I made the other document of the 12th of February. I am not certain about the letters, only the checks. But I think that I put the checks there as I checked the property off in putting it in the other document of the 12th of February 1904, although I am not certain about it.

Q. Who prepared this document of the 15th of June, 1903, Plaintiff's Exhibit "C"?

A. Mr. Regidor.

Q. Who did the typewriting?

A. I did the typewriting; all the work of Martinez I did.

Q. I call your attention to the plaintiff's Exhibit "D" and ask you if this was also prepared by you at the dictation of Regidor?

A. All.

Q. Is this Exhibit "D" the original?

A. Yes, sir.

Q. I call your attention to Plaintiff's Exhibit "E" signed by Don Benito Jose and subscribed and sworn to before Jos. M. Wolfson, a notary public and ask you to state if you know who prepared that document?

A. I did not notice before; that is the first time I have seen it.

Q. I call your attention to Plaintiff's Exhibit "F" and ask you to state whether that is an original document or a carbon duplicate?

A. I cannot assure about it, this was written by the operator or notary, Rosado; it seems to be a copy; it was not made by me.

Q. You did not intervene in the making of this document "F"?

A. No, sir, I know when it was made but I did not intervene. This document was drawn by Jose Rosado because the manager of the bank demanded that Rosado should act as the notary and I remember that Senor Rosado told Mr. Brown that Brown should give him minutes or notes of the document before he should sign it, and that Brown furnished a copy to Regidor. Regidor found it all right and notified Brown there was no objection to signing it.



Q. I call your attention to plaintiff's Exhibit "A" and ask you to state whether that is a copy or the original?

A. This is a copy.

Q. Who prepared that document?

A. Don Eduardo Gutierrez prepared the document; that is to say, we made a document and it was given to him to formalize and execute.

Q. Do you know where the original of Plaintiff's Exhibit "A" is?

A. I had it with me.

It is admitted that the original document of which Plaintiff's Exhibit "A" appears to be a carbon duplicate and the one which is recorded in the Custom house was found in the trunk of the witness Pedro Cantero when the trunk was seized under the search warrant as a result of investigations by the Prosecuting Attorney's office, being the document which is the foundation of the suit No. 3363.

Q. You have stated that you prepared all of the documents evidencing the transactions between the Bank and Regidor Martinez; I will ask you to state whether that includes the preparation of all of the documents of sale with right of redemption, that is all of the documents which were registered in the Registry of property executed by Martinez in favor of the Bank?

A. All of the transfers of the property were registered in the registry of property.

Q. You do not understand my question; you have stated that you prepared all of the documents evidencing the transactions between the Bank and Regidor and Martinez; I will ask you to state whether that includes all of the documents which were registered in the registry of property executed by Martinez in favor of the Bank?

A. Yes, sir, all included.

Q. State how it happened that Regidor and yourself had in your possession all these documents executed in favor of the Bank?

A. Mr. Regidor made the documents while we were waiting for the partition to be made and they were to be cancelled by the documents of partition and by the adjudication to the Bank of the properties with pacto deretro of the property belonging to Don Francisco.

Q. You have identified one promissory note of 30,000 pesos, bearing the name of Francisco Martinez and his wife, the corner of which seems to have been torn off; state whether there was another promissory note of 30,000 pesos executed by Francisco Martinez and the Bank?

A. There is another promissory note of 30,000 pesos.

Q. Signed by whom?

A. By Martinez alone.

Q. In whose favor?

A. International Bank.

57 Q. Do you know where that promissory note is now?

A. I cannot tell you.

Q. Do you know where it was at the time they began the investigations in the Prosecuting Attorney's office of the charges of fraud against Regidor and Brown?

A. I saw it in the possession of Regidor. I do not remember whether it was in the trunk or whether Mr. Regidor took it before.

Q. You have stated that these other pagares, these other promissory notes which you have identified here, executed by Martinez in favor of the Bank were in the Bank at the time the investigations in the Prosecuting Attorney's office and that they were delivered to you by Mr. Brown for Regidor. Now, state if you know, whether this other 30,000 pesos note was also in the possession of the Bank and delivered with the other promissory notes to you to be delivered to Mr. Regidor?

A. I believe it was on this occasion at the time of delivering the notes by Brown to Regidor through me that I saw this note.

Q. I call your attention to Defendant's Exhibit 56 and ask you to state what that document is?

A. Exhibit 56 is a certified copy of the original presented by us, and certified by Chofre, Clerk of this Court, of the partition proceedings between Francisco and Pedro.

Q. And the rest of the document, what is it?

A. It is a partition itself in accordance with the order of the Court, in which partition the Bank intervened by order of the Court.

Q. Is this the original of the partition proceedings?

A. Yes, sir.

58 Q. Who prepared these partition proceedings?

A. The partition was made exclusively by Don Jose Machuca, with my assistance; it was agreed that we were to receive 10,000 pesos for the work which we never got. This work was done in accordance with the desire of Mr. Regidor.

Adjourned until 8 A. M.

Proceedings Held at 8 A. M., March 9-1906.

Same appearances:

Witness CANTERO on the stand.

By Mr. GIBBS:

Q. State if you know, why this document of partition was not filed with the Court?

Judge ODLIN: Objected to as immaterial to the issue, it not being shown to the Court that this partition was ever reported to the Court and that the reasons for such act are not material to the issues in this case; it is merely an attempt to do something which was never carried out.

The COURT: What is the purpose?

Mr. GIBBS: The purpose is, to complete the chain of circumstances relative to the fraud perpetrated upon Francisco Martinez and to show more clearly the intention of the parties so far as the execution of this document of the 15th of June, 1903, is concerned, as well as the document of the 12th of February, 1904, and which fit in perfectly with same.

The COURT: Do you want to show that this was the document prepared by Regidor and that the International Bank had something to do with it and that paper was prepared and never signed by Pedro?

Mr. GIBBS: I want to introduce it to show the fact that it was prepared in accordance with the order of Judge Crossfield  
59 ordering the partition of the property, and the conspiracy to defraud.

The COURT: What do you expect to prove by this witness about that?

Mr. GIBBS: I understand there was some difficulty or trouble gotten into as to payment of fees and also on account of the declaration of prodigality coming before the time it was signed by the Bank and other people, also, after the prodigality.

The COURT: Objection sustained.

Mr. GIBBS: Exception.

Q. I call your attention to defendant's Exhibit 57 and ask you to state who prepared that document?

A. By Mr. Regidor and I did the typewriting; this word "blanco" which appears there on the document (indicating) I put there.

Q. State to the Court what these documents, Exhibits 58 and 59 are; who prepared them and to whom, if any one, were they delivered?

A. This is a letter addressed to Mr. Brown and was sent in the envelope (Exhibit 59) and the envelope was returned with the initials of Mr. Brown; the original of the letter remained at the Bank.

Q. Are those the initials of Mr. Brown on the envelope Exhibit 59?

A. Yes, sir, I remember that he wrote it there in my presence.

Mr. GIBBS: I ask the attorneys of the Bank to produce the original of Exhibit 58, or that we be permitted to offer this carbon copy.

Q. State in whose handwriting and for what purpose this,  
60 Defendant's Exhibit 60, was prepared?

A. This is a rough draft of a letter written by Mr. Regidor himself and the original was to be signed by Mr. Brown.

Q. Do you know what this little small slip attached to the document, Exhibit 60 is and where that came from (marked Defendant's Exhibit 61)?

A. I do not know where it came from.

Q. Where was this document, Defendant's Exhibit 60?

A. In my trunk; this (referring to slip marked Defendant's Exhibit 61) was an advice given to Don Ricardo of gambling that was going on with the old man.

Q. Do you know the handwriting of that slip, Exhibit 61, and the signature?

A. No, sir, the name is Lucio Angeles, but I do not know him probably Mr. Ramirez can identify that.

Q. Please state in whose handwriting these three pieces of paper or memorandum marked Defendant's Exhibit 62 are?

A. The two first ones were written in the handwriting of Regidor

the third one is rough draft dictated to me and corrected by Mr. Regidor.

Q. Whose signature, if you know, are these attached to Defendant's Exhibits 63, 64 and 65?

A. 63 is signed by Mr. Regidor, also written in the handwriting of Mr. Regidor; 64 is written and signed by Regidor; 65 is typewritten, signed by Regidor and Sebastian Lozano.

Q. Do you know who received the 2000 pesos mentioned in Defendant's Exhibit 65?

A. These 2,000 pesos were for Mr. Regidor but the signature of Mr. Lozano was placed to the document with the guarantee of Regidor.

Q. State if you know, what use was made of these documents marked Defendant's Exhibits 66 to 69, inclusive?

61 A. Don Francisco Martinez had mortgaged to Don Gregorio Legaspi two pieces of property in Calle Aceteros and Espeleta for 9,000 pesos for the two. Mr. Regidor asked of Martinez 9,000 pesos in order to redeem from Senor Legaspi these two properties promising him that he would return the 9,000 pesos into the Bank and the Bank would pay the obligation. Then Mr. Regidor ordered me to prepare these escrituras he receiving the money from Mr. Martinez. He applied it to his own use and excused himself to Mr. Martinez by saying that the obligation had not matured yet and for that reason Mr. Legaspi did not want to accept the money. The escrituras were then exhibited to Mr. Martinez and he delivered the money. Then when he told him Mr. Legaspi did not wish to accept the money until the period matured afterwards he made Martinez sign a letter in which he authorized Mr. Regidor to dispose of this money personally until the maturity of the obligation. As is seen by these escrituras the notary public authorized them without there having been signed by the parties interested.

Q. Do you know where the statement signed by Martinez to which you refer is?

A. This letter Mr. Regidor guarded with great care, but he gave a copy to Mr. Brown in order that he might know the contents of it and later at the last hour, at the time of the complaint before the Prosecuting Attorney, Regidor sent a check to the Bank for 9,000 pesos and I remember he accompanied it with a letter which I had in my trunk also, which letter stated in substance——

Q. I call your attention to defendant's Exhibit 70 and ask you what that is?

32 A. This is the rough draft of the letter which I referred which Mr. Regidor made Martinez sign; it is written in the handwriting of Don Ricardo Regidor.

Q. I call your attention to this letter appearing to be dated July 2nd, 1903, directed to the Agent of the International Banking Corporation, signed by Ricardo Regidor and ask you to state whether that is the letter written by Regidor to the Bank at the time of these criminal proceedings in reference to the 9,000 pesos matter (marked Defendant's Exhibit 71)?

A. This is the letter signed by Regidor and sent to Brown but that which is not true is, the date; the date should be a long time

after the date mentioned in it; that is to say, it was antedated; and in reference to this matter Senor Regidor told me that he had not had occasion to use that check.

Q. Whose signatures are these attached to Defendant's Exhibit 72?

A. This is a copy and has several signatures to it and the original had another signature attached; here is the signature of Mr. Brown; on the original the signature of Mr. Del Rosario is also attached.

Q. Explain the circumstances surrounding the execution of this document?

A. In this document they pretend to give possession to the Bank of all the property which was first hypothicated by the escritura of the 2nd of February; Don Lorenzo del Rosario was appointed by the Bank to take possession of all the properties mentioned in this escritura; Azaola accompanied by me and Lorenzo del Rosario, went to each house and at some of them we demanded that they  
63 pay the rents to Del Rosario in place of Martinez, when I was putting in the final document the relation of all the tenants, the agreement of the 9th of June was made and as they were about to make the partition and adjudication of the property, this proceeding was suspended.

Q. I call your attention to defendant's Exhibit 73; you may state where that document was kept?

A. This is the same that was in my possession.

It is admitted that Defendant's Exhibit 74 consisting of three sheets of paper, is in the handwriting of Ricardo Regidor with the exception of the part which is written on the typewriter and this part it is admitted was prepared at his dictation and was in the possession of the witness, in his trunk when same was seized by the police.

It is also admitted that all documents bearing the initials of "H. D. G." written by Mr. Gale; the initials "T. C. K." written by Mr. Kinney, of date July 8, 1904, were in the trunk of this witness, Cantero, and were seized by the police.

Q. State to the Court by whom defendant's Exhibit 76 was dictated and written, if you know, and what use was made of it?

A. Dictated by Mr. Regidor, written by me on the typewriter; this was a report prepared, in order to have at hand a memorandum of what had been done with reference to Francisco Martinez.

Q. Who had these documents in their possession, or by whom were they used; state whether or not Mr. Brown ever saw same?

A. It was prepared for him.

64 Judge ODLIN: Exhibit 76 I admit; everything contained in it I think is true.

Q. State whether this document, Exhibit 77, was ever executed and if not, why?

A. This document Mr. Brown made in compliance with that stipulation of the 9th of June, 1903. It is an escritura similar to that which appears to have been executed on the 12th of February, 1904, between Don Francisco Martinez and Brown, transferring to

the Bank the property which had been adjudicated to him in the partition and Mr. Brown in his turn released the encumbrances over the part belonging to Pedro Martinez in compliance with the same escritura. These two escrituras and the other was also in the trunk. This one was prepared by me and the other which also ought to have been there was prepared by Montagne, being practically the same, except according to the American system they were more brief. This document, 77, was never executed.

Q. Why was it not signed?

A. Because the other was not executed, either, and they were waiting for the time to come when Francisco Martinez should not be incapacitated, because those included in this escritura, Francisco Martinez did not intervene, because he was incapacitated to execute the other which has relation to this, it became necessary that both should be done at the same time, in compliance with the obligation of the 9th of June.

Q. Do you know the signature of the first sheet of Defendant's Exhibit 78?

A. I know the handwriting and also the signature.

Q. Whose handwriting and whose signature is it?

A. Written by Don Gabriel Schmidt and signed by his son-in-law, Enrique Somes.

65 Q. Do you know the facts concerning that matter?

Judge ODLIN: Plaintiff's counsel objects to any questions concerning this document because it does not appear it has any connection with this case.

The COURT: What do you expect to show by the witness?

Mr. GIBBS: I expect to show that this note, or part of it was paid by the Bank and all the transaction was conducted through the medium of Regidor in combination with Brown.

The COURT: Objection overruled; let the witness state what he knows.

Judge ODLIN: Exception.

Q. State to the Court what you know about the transaction in Defendant's Exhibit 78, and especially about the note mentioned there?

Judge ODLIN: Objected to as the man who wrote the letter is in Manila and he is the best evidence; it has not been first established that Somes was an agent, or accomplice or associate in any way with Ricardo Regidor or the other alleged conspirators.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. The letter of Somes refers to a promissory note of Francisco Martinez, payable to the order of Thomas del Rosario, Governor of Bataan, for the sum of 14,000 pesos; this promissory note was acquired by Senor Regidor by means of the co-operation of Jose Basa, and I believe it was purchased for 5,000 pesos.

Judge ODLIN: Move to strike out the latter part as incompetent.

The COURT: Motion sustained; strike it out; hearsay evidence of the witness is not competent.

Q. Do you know how much Don Ricardo Regidor paid for that note?

66 A. It seems to me it was a check, which I gave for 5,000 pesos. If you will allow me to look at the back of the checks I can tell (looks at the checks) the same was made by me and was for the sum of 3,000 pesos by check No. 27285 given to Senor Basa, of which amount I believe Mr. Basa only had a commission. I believe Mr. Basa endorsed it in blank and this promissory note was turned over to Mr. Brown in accordance with the combination between Regidor and Brown—

The COURT: That is not competent, the latter part about the combination.

WITNESS: Given to Mr. Somes in order that it might be collected from Senor Martinez and placed in the current account of Mr. Somes; they changed their opinion in two days and they entrusted to me that I should prepare a protest in reference to this pagare, in which Mr. Martinez was to answer that they should deal with me, because I had all the necessary powers to settle the matter. I did not care to submit to this agreement and I refused to have Martinez sign it.

Q. I show you check No. 27285, marked Defendant's Exhibit 79 and ask you if that is the check with which that pagare was purchased, as explained by you?

A. Yes, sir, this is the check I issued in payment of this note.

Q. Explain how that check was endorsed and collected?

A. This check, after putting the rubricate of Regidor on, which he was in the habit of putting on important checks, this rubricate on the back of this check is the countersign which Mr. 67 Regidor had with Mr. Brown to advise him that this had relation to the combination between them; I took this check to Mr. Brown, in order that he should accept it and after it was accepted I gave it to Mr. Basa; this other document (referring to the last blank protest of Defendant's Exhibit 78) refers to a promissory note of 32,000 pesos; when it arrived in the possession of Regidor it only amounted to 23,000 pesos and it was purchased by check given by me from my check book for 35,000 pesos; Mr. Schmidt took part in this transaction. This was paid by check No. 27288 for 3500 pesos and according to my knowledge I delivered it to Senor Sebastian Lozano.

Q. State what that countersign on the back of this check referred to by you, in Defendant's Exhibit 80, is?

A. That is the same countersign made by Mr. Regidor as I stated before and signed below by Mr. Lozano; Brown never paid any checks, unless they were marked with this special countersign, even though it were presented by me, it had to have this countersign or a previous identification in writing to Brown. This promissory note was acquired through Don Sebastian Lozano from its owner Gonzalez Reyes afterwards Mr. Regidor availed himself of Mr. Schmidt



and it was endorsed to Don Gonzalez Reyes, the vendor to Don Gabriel Schmidt before the witness Sebastian Lozano and Gervacio Garcia, as appears in the act of the protest. It was an attempt made to protest and the proceeding did not take effect. This promissory note is in my possession to-day. Mr. Regidor gave it to me, in order that I might avail myself of it when I had an opportunity in compensation for my labors and I will sell it for two pesos.

Q. Do you know whether this last note which amounted to 68 23,000 pesos when it fell into the hands of Mr. Regidor and which you now have in your possession, ever passed through the Bank or not?

A. Yes, sir, all these promissory notes went through the Bank first, but on the complaint being made in the Prosecuting Attorney's office, they were taken out.

Q. Are these two stubs, Defendant's Exhibits 81 and 82, the stubs of the last two checks about which you have testified?

A. Yes, sir, for the purpose of these two pagares; I may add also that the money which I checked against in my current account was not mine.

Q. Do you know how your current account in the International Bank was opened?

A. It was opened as a consequence of the operation with Martinez with a promissory note, I do not remember who gave it, of 980 pesos; the first credit was for a promissory note of 980 pesos on the 13th of March, 1903.

Q. Calling your attention to Defendant's Exhibits 27 to 32, you may state what you know about those documents and whether or not they entered into your current account?

A. This is in consequence of the promissory note given by Martinez in favor of Don Juan de la Luz of which 8,250 pesos appear in the name of Don Lorenzo del Rosario; and this check of 7,587 pesos extended by Brown and signed by Ricardo Regidor, Exhibit 28, is some business between them and I do not know anything about that. Regidor had an account current in the Bank and when the purchase of the promissory notes of Martinez was begun, he opened an account in the name of his wife and another one in my name to serve for all the underhand business; that which I can say is, that 69 I had no disposition of this money and an examination of the deposits and withdrawals will show this fact.

Q. Go ahead and explain any of the entries that you are familiar with?

A. It appears, for example, that my deposits until the 17th of March amounted to 8,567 pesos and 68 cents and during this time I had drawn checks for the sum of 16,553.90 pesos, overdrawing without any guarantee whatever, 7,986.22 pesos, which Mr. Brown paid without any guaranty whatever. On the 8th of April there was a deposit of about 8,250 pesos for the operation of Don Lorenzo del Rosario in the promissory note of Juan de la Luz, and with this deposit there was only a balance in my favor of 263.78 pesos and notwithstanding that, I draw checks until the 29th of June, amounting to 1286.47 pesos, making an overdraft of 1022.69 pesos; there was a new deposit on the 29th of June for 800 pesos.



Q. Do you know what this deposit of 800 pesos was for?

A. This was disposed of by Mr. Regidor and Brown and I did not have knowledge of that. The balance against me on that day was 222.69 pesos and during the month of July I overdrew 800 pesos, owing therefore on the 21st of July, 1903, 1022.69 pesos and on this day there was deposited 1,000 pesos, making a balance against me of 22.69 pesos. In the entire month of August I overdrew to the amount of 3210.52 pesos and owed on that day 3,233.21 pesos; on the 31st of August there was deposited 2883 pesos. I being then indebted to the Bank 350.21 pesos. In September I overdrew 6,196.19 pesos, owing to the Bank on that day, 30th of September, 6546.40 pesos, which amount was not paid until the 9th of November. This deposit I think I remember that I myself made and I believe it was with a check of the Casa Comision signed by Don Jose Basa, as far as I can remember.

Q. Does this pass-book, Exhibit 33, contain a statement of your account?

A. I believe so, I have another one. I have one here prepared with great irregularity by the Bank in which the numbers of the checks are set forth.

Q. Who put the numbers that appear there in lead pencil?

A. I did it in comparing it.

Adjourned until 2:30 P. M.

Proceedings held at 2:30 P. M. Same appearances.

Witness CANTERO on the stand.

By Mr. GIBBS:

Q. I call your attention to Check No. 24038 for 5250 pesos, issued by Francisco Martinez, dated April 21, 1903, and ask you to state what rubricate or countersign is that appearing on the back of that check in ink?

A. Mr. Regidor's countersign and rubricate.

Q. What are the other endorsements in ink on that check?

A. Signature of Francisco Martinez, the other I believe I do not know well.

Q. I call your attention to the stub of that check appearing in the stub-book of Francisco Martinez and ask you to look at the stub and then state if you know, for what operation this check was given? That is, refreshing your memory from the stub of this check and by examination of the check itself, state what the facts were relative to the giving of this check?

A. It appears here that it was for rice, but I do not know why Martinez put on here "for rice."

71 The COURT: What the witness "supposes" is not competent.

Q. Do you know what the check was given for, if it was not given for rice?

A. This check was given to Senor Regidor, I do not know why he put in his stub "for rice" because on account of this pagare they

de him sign a promissory note to the order of Senor Sy Chui in which Don Ricardo also sent to the Bank and for that reason surprised to find that he has made it appear here that it was for rice.

Q. Do you know who got the proceeds of this rice check?

A. I do not know, Mr. Regidor retained the check.

(Checks are marked Defendant's Exhibits 84-92 inclusive.)

Q. I call your attention to Defendant's Exhibit 93 and ask you state if that is the promissory note given to Sy Chui Chim that you referred to?

A. This was the only rice which Martinez got and for which he ended the promissory note.

Q. State to the Court in whose handwriting is Exhibit 94 for the defendants?

A. Mr. Regidor's.

Q. Do you recognize the "F" at the foot of that?

A. The signature of Francisco Martinez, but when it was written the machine Francisco Martinez wrote his name again on the rewritten one.

Q. I call your attention to Defendant's Exhibit 95, dated the 30th January, 1903, and ask you to state whose signature that is affixed the foot of that instrument?

A. Francisco Martinez.

Q. Who prepared that document?

A. Mr. Regidor.

Q. Who wrote it on the typewriter?

A. The rough draft of this letter was what I have already identified.

Q. Who did the typewriting of this letter?

A. I did.

Q. I call your attention to promissory note of 80,000 pesos dated January 2nd, 1903, Defendant's Exhibit 96, and ask you to state whose signature is affixed to that promissory note?

A. Francisco Martinez.

Q. And whose signature is attached to Defendant's Exhibit 97?

A. Francisco Martinez.

Q. State whether this promissory note of 80,000 pesos, Exhibit 97, is one of the promissory notes referred to in your previous answers as having been in the Bank at the time the investigation of the prosecuting attorney was made?

A. Yes, sir, this promissory note was in the Bank at that time?

Q. And this document was afterwards placed in your trunk?

A. Yes, sir, Regidor ordered it placed in the trunk.

Q. Explain to the Court what you know about this Exhibit 98, and 100?

A. This is one of the reports on notes delivered to Mr. Regidor when he gave the commission to hunt up gambling promissory notes. There is a relation of a promissory note which appears to be in the handwriting of Mr. Rodriguez.

73 Q. Do you know why the obligation in reference to the Varadero was made in gold, instead of Philippines currency or Mexican?

A. I do not know; the only thing I know is that Don Ricardo Regidor got a check for 30,000 pesos and he issued a receipt to him, made by me on the typewriter.

Q. In whose handwriting is this memorandum, Defendant's Exhibit 102 and the envelope attached to it?

A. Mr. Brown.

Q. In whose handwriting is the first part of Defendant's Exhibit 103, and in whose handwriting is the last part of that letter?

A. The first part is in Mr. Regidor's and the second part is Mr. Brown's.

Q. In whose handwriting is the address "Mr. Brown, presente"?

A. My own handwriting.

Q. And the words "R. W. B." in red pencil, whose handwriting in that?

A. Mr. Brown's.

Q. Calling your attention to Defendant's Exhibit 104, state in whose handwriting the first part of that letter is and whose is the latter part?

A. The first part is in my handwriting and the second part is Mr. Brown's, but it was understood that the letter was written by Mr. Regidor. Because sometimes Mr. Regidor would say, "Tell Mr. Brown this" and I did it and other times Mr. Regidor wrote directly, but put as his signature "C" for Cantero and all of the letters directed by Mr. Brown to "Cantero" it was understood that they were for Mr. Regidor; he never directed any directly to Mr. Regidor. The envelopes were always in my name; latterly we put an em-

74 ployee of ours there in the Bank who was paid by Mr. Regidor, whose duty it was to be constantly in the Bank there at the order of Mr. Brown in order to carry messages in writing from Mr. Brown to us.

Q. Calling your attention to Exhibits 5, 6 and 7, please state in whose handwriting those notes are?

A. Mr. Brown.

Q. The statement already made by you, does that apply also to defendant's Exhibit 102, referring to the address on the envelope of Senor Cantero?

A. Yes, sir.

Q. In connection with your explanation of the letters, state if you know, how Mr. Brown as a rule, went to and from the Bank, in whose vehicle?

A. At one time for about three months we sent the carromata to his house at 7 o'clock in the morning and he would come to the house of Regidor before going to the Bank and afterwards he would go in the same carromata to the Bank; the afternoons, the same thing would occur and on some occasions at one o'clock in the day we would send it for him again, he having eaten in Regidor's house sometimes. Latterly when the office of the Casa Comision was closed, he came there also and at last Ricardo Regidor went

to the house of Mr. Brown every night; it was said that they were sweethearts, because they went to see each other three or four times a day.

Q. I show you document marked Defendant's Exhibit 108 consisting of a private code torn in six pieces and ask you to state, if you know, in whose handwriting it is?

A. Mr. Brown's.

Q. Where did you find that document?

A. Among the papers of Senor Regidor; he gave it to me to take care of it.

Q. Do you know about when this was prepared?

A. A few days before Mr. Brown went away.

Q. Do you know about what day that was when Mr. Brown went away?

A. I do not remember.

Q. Do you know what year?

A. Last year.

It is admitted that document- marked Defendant's Exhibits 109 to 123 inclusive, are signed by Francisco Martinez or by R. W. Brown, or both.

Q. I show you these documents marked Defendant's Exhibits 109 to 123 and ask you to tell us if the signatures of the persons who signed same are authentic?

A. The signatures appearing on these documents are authentic. Many of them have been presented to the registry of property.

Q. Who prepared those documents?

A. Mr. Regidor and Mr. Azaola.

Q. Who did the typewriting?

A. The operator engaged to write these documents on the typewriter and also who appears as a witness to some of them, named Gregorio Ramos and Gervacia Garcia.

Q. I call your attention to Defendant's Exhibits 124, 125 and 126 and ask you to state if you know, what those checks were given for?

A. This one, 124, was signed by Martinez and collected by Regidor.

Q. How do you explain that this check was cashed without having the countersign of Mr. Regidor on it?

A. He, perhaps, sent a message before, because sometimes he put on his countersign and sometimes he notified Mr. Brown—

Judge ODLIN: I move that the answer be stricken out as incompetent.

The COURT: It is not competent.

Q. Do you know for what those other two checks were given, Exhibits 125 and 126?

A. When Regidor needed money he asked it of Martinez.

Q. Were these checks collected by Ricardo Regidor?

A. Yes, sir, collected by Pilar Corrales; this other one, 126, was collected by Ricardo Regidor personally.

Q. Who is this Regorio Ramos who endorsed this check No. 124?

A. An employee we had towards the end, employed by Regidor and who signed as a witness in the documents of Martinez.

Q. Do you know approximately how much cash and how much money Francisco Martinez received for himself, if any, of his operations and loans from the International Bank?

A. It is very easy to ascertain it because he did not take any money, except by virtue of check and all of the escrituras showed that he signed them in consideration of the money delivered to him by Mr. Brown, but there was no money paid at all, so that it may be said that he did not take any of the money, except by checks. Of these checks there are 30,000 pesos which were secured by Regidor by making him believe that it was being deposited in his current account; he also got another check of 9,000 pesos to redeem the Legaspi loan; he also secured of him about which I know, 2,000 pesos in the shape of a check in exchange for the pagare of Lozano.

77 Q. You have not understood the question; how much cash and how much money Francisco Martinez received for himself if any, out of his operations and loans from the International Bank?

A. I believe I can state that the money taken by Francisco Martinez for his own benefit would not amount to 15,000 pesos and I know this because Martinez was always around the house crying and asking for money because he had issued checks and they had not been cashed and Regidor in order to satisfy him from time to time authorized Brown to pay him a check. That is what I know about that.

Judge OBLIN: I object to the answer and move to strike it out as the argument of the witness.

The COURT: Yes, the witness must not argue the case.

Q. Do you know whether Regidor disposed of all the gambling promissory notes that he purchased from various persons given by the defendant, Francisco Martinez, to the International Bank?

A. He told me that he had realized the payment of them, but afterwards when the investigation was made by the Prosecuting Attorney he recovered them from the Bank and asked me to take care of them. He had much interest in finishing up all the escrituras of Martinez to place his affairs with the Bank in a formal condition and they had the idea of transferring definitely to the Bank a number of the properties of Martinez—

Judge OBLIN: I object to any long conversation about what Brown and Regidor would have done, if the Prosecuting attorney had not interfered.

The COURT: I do not think that is competent; the statement of the witness as to the idea of Brown and Regidor is not competent.

78 Q. Did you ever have any conversation with Ricardo Regidor about his dividing profits with Brown in the Martinez deals?

Judge ODLIN: Objected to as the witness has not shown any knowledge; furthermore the Bank not knowing of it would not be bound by it; it is immaterial.

The COURT: I will permit the witness to answer and reserve my ruling on the objection.

Judge ODLIN: Exception.

A. At one time Mr. Regidor told me when he negotiated a promissory note that I would have a share or part in it, one of the promissory notes which were discounted. When it came to the promissory note of Tomas del Rosario of 13,000 pesos Regidor told me that he needed this 14,000 pesos for Mr. Brown in accordance with an agreement with him. That was all that he said to me in reference to that matter. Afterwards he did not talk to me any further about it, because I refused to comply with his desire and he wished that I should get the promissory notes and give other guaranties in the name of Martinez by virtue of the power of attorney which I have, in order to negotiate with the guaranties which I should give. I did not wish to do so.

Mr. GIBBS: That is all.

Redirect examination by Judge ODLIN:

Q. Did you ever have any talk with Brown about those matters?

A. No, sir.

Q. Do you know yourself whether Brown ever got five cents of the money out of those deals or not?

A. By information from Regidor.

Q. Regidor lied to you very often did he not?

A. I do not know whether he lied, but I think he was telling the truth in this matter, because of the conduct of Brown in the Martinez matter.

Q. Is it not a fact that Mr. Regidor told you a good many statements which were not true?

A. In some matters, yes, sir.

Q. You have no knowledge of Mr. Brown's receiving any money personally from the Martinez matter except what Regidor told you?

A. Nothing but what Mr. Regidor told me, but the acts of Brown demonstrated to me that Regidor did not lie on that occasion?

Judge ODLIN: I ask that the latter part of the witness's answer be stricken out about "but the acts, etc." as the argument of the witness.

The COURT: That is not competent; strike it out.

Q. Referring to this matter of the private cable which is marked Defendant's Exhibit 108, I will ask you if that was not written long time after Mr. Brown ceased to be the manager of the International Bank?

A. I stated that it was some days before he left; clearly it was after he ceased to be the agent.

Judge ODLIN: I move to strike out the testimony of the witness

in regard to Defendant's Exhibit 108, because witness admits that same was written after Brown had ceased to have anything to do with the International Bank and plaintiff cannot be bound by his acts after they discharged him.

The COURT: I will overrule the motion, but will consider that together with the statements of the witness to determine its value.

Judge OBLIN: Exception.

Adjourned until March 10-1906.

Same appearances.

Witness CANTERO, on the stand:

Mr. GIBBS:

Q. Calling your attention to deposit book, Exhibit 127, I will ask you if that is the deposit book of your account current in the International Bank?

A. It is.

Q. Referring to the three entries of deposit dated the 29th of June, 31st of July and 31st of August, in silver, state how you happened to make those deposits in silver; how they happened to be made?

A. This amount of silver was given to me by Mr. Regidor; some of it was proceeds of checks which he sent other persons to collect and they were deposited in cash.

Q. Referring to all the deposits made here, state from what source, if you know, the money and checks were derived?

A. The first were from operations with Don Francisco Martinez this 800 pesos on the 29th of June and this of the 31st of July is money Mr. Regidor gave me; that of the 31st of August was already in the Casa Comision of Pilar Corrales was taken from there and was for the purpose of satisfying an overdraft. The last deposit of the 9th of November, of 6600 pesos, was a check, I do not remember whether it was signed by Basa or Azaola on the Casa Comision of Pilar Corrales to satisfy the overdraft.

Q. Explain also what you know with reference to the first three deposits?

A. The first on opening this account, we terminated a conference with Lorenzo del Rosario in respect to the promissory note of  
81 Juan de la Luz and agreed that the account current should be opened by Lorenzo del Rosario and he liquidated some accounts which he had pending with Florencio del Rosario at that time and which was arranged; that after the conference with Lorenzo del Rosario we went to the Bank and opened this account with this promissory note; and on account of the length of time expired, I do not remember whether it was one in favor of Lorenzo del Rosario but it ought to appear in the books of the bank. The second of 7,587.68 was a check of Senor Regidor; the third of 8,250 a check of that amount of Lorenzo del Rosario.

Mr. GIBBS: That is all.

Judge ODLIN: That is all.

(On March 14th, 1906, witness CANTERO was recalled by Mr. Gibbs.)

By Mr. GIBBS:

Q. The defendant Martinez has testified that all of the documents signed by him were read and explained to him before signing; please state to the Court in what way these documents signed by Martinez were read and explained to him?

A. As far as those documents I had Mr. Martinez sign are concerned he, himself, read the documents; I told him to read the documents and he read them.

Q. In what form were these documents when he signed them; were they typewritten sheets, fastened together, or loose?

A. The documents which I gave him to sign were already united.

Q. Do you know whether any documents were signed by him which were not fastened together?

Judge ODLIN: Objected to as repetition.

Mr. GIBBS: I am referring to signed documents.

The COURT: I think you have gone over that once; but  
82 objection overruled.

Judge ODLIN: Exception.

A. The documents dated February 12th and the document dated the 15th of June, these were fastened afterwards.

Q. At the time these documents were signed on the 15th of June, 1903, and the 12th of February, 1904, state to the Court whether or not you had duplicate sheets for substituting, bearing the form of both of these documents at the time they were signed?

A. As far as the document of the 12th of February is concerned, the Court has seen those papers.

Q. And that of the 15th of June?

A. As far as the 15th of June document was concerned, no alteration was made.

Mr. GIBBS: That is all.

Judge ODLIN: That is all.

Proceedings Held March 6th, 1906.

Same appearances:

Judge ODLIN: It was agreed in open Court in the month of January, 1906, there being present the new guardian of Francisco Martinez, Sr. Vicente Ilustre and myself, that he should be substituted as a defendant in these cases in place of Mr. Cohn. There was no formal order made in the record by your Honor and I would like that to appear.

Mr. GALE: We have no objection.

The COURT: I think the order was entered. Let the record show it is so ordered by the Court.



A. A. MONTAGNE, a witness for plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination by Mr. ODLIN:

83 Q. What is your name, residence and occupation?

A. A. A. Montagne, attorney at law, live at No. 461 Calle Beaterio.

Q. Where were you in the month of June, 1903?

A. In Manila.

Q. I hand you check which has been referred to in this case and ask you if you ever saw it before, the check dated June 12, 1903, signed by Francisco Martinez and drawn for the sum of 1600 pesos, Mexican currency, check No. 15968 S.?

A. Yes, sir.

Q. I find an endorsement on that check; please state whose endorsement that is?

A. It is mine.

Q. Under what circumstances did you endorse that check?

A. This check was obtained by us from Francisco Martinez, we acting on behalf of Pedro Martinez; this together with other money or checks, I do not recall now whether it was money or checks for the payment of some alimony and monthly allowances that were then due from Francisco Martinez to Pedro Martinez, Francisco then being the administrator of the estate and there had been an order many months prior to that time, an order of the Court, ordering Francisco Martinez to pay to Pedro 1,000 pesos per month, I think it was somewhere along about 1,000 pesos per month as alimony, which had not been paid for a number of months and after considerable attempts before the Court we finally obtained the amount of money for Pedro from Francisco and this is one of the amounts.

Q. You said the check was delivered "to us"; whom do you mean by that?

A. Montagne and Domingus, attorneys for Pedro.

Q. Mr. Domingus was your partner?

A. Yes, sir.

84 Q. How did you come to endorse it individually?

A. That was turned over to us by Pedro, I think, if I am not mistaken, in payment of some fees then due.

Q. You are positive you received the check from Pedro?

A. No, I did not receive the check from Pedro, either from Francisco Martinez or from the sheriff, I do not recall now which, either from Francisco or the Sheriff.

Q. What relation existed between Pedro and Francisco Martinez?

A. Do you mean as to friendly?

Q. Parental?

A. They were father and son.

Q. Which was the father?

A. Francisco.

Q. I show you another check which is No. 15970-S, dated June 15th, 1903, drawn for the sum of 6400 pesos and ask you if you know by whom it is endorsed?

A. That appears to be endorsed by Pedro Martinez.

Q. Do you know his signature?

A. Yes, sir.

Q. Who was counsel for Pedro Martinez at that time?

A. I was, that is the firm of Montagne & Domingus.

Q. Do you know anything about that check?

A. I think so.

Q. State to the Court what you know about it?

A. My best recollection of it now is, that it was for the payment of that alimony, that is my best recollection.

Q. Do you know what the condition of accounts were at that time between Francisco and Pedro?

A. In a general way; I cannot tell you in detail.

Q. Please state what you know?

85 A. In a general way at that time Francisco was indebted to Pedro for quite a number of months for alimony of 1,000 pesos per month.

Mr. GIBBS: I move to strike out the answer as not being the best evidence.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

Q. During that time I believe you stated that you were counsel for Pedro?

A. I was.

Q. Did you ever have any conversation with Francisco?

A. I cannot say that whether I had any conversations with Francisco then. I have had a number of conversations with Francisco but I cannot specify now when and really what they were.

The COURT: How much is the check for?

A. 6400 pesos.

Mr. ODLIN:

Q. Do you know whether or not Francisco ever owed Pedro Martinez for money which had been loaned by the latter?

Mr. GIBBS: Objected to as no foundation has been laid and it is immaterial.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. I do not know; the matter of loans between father and son never came in the slightest way before me.

Q. Did you ever have any recollection of Francisco ever claiming he loaned money to Pedro?

A. No, sir, the matter of loans between father and son never came up in my investigations.

Q. That applies also to loans which might have been made from Pedro to Martinez, you have no knowledge of such transactions?

86 A. No, sir, absolutely none.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. Referring to the 1600 peso check, did you receive that directly from the hands of Francisco Martinez?

A. I cannot now recall whether I received it from Francisco Martinez or from the Sheriff, my best recollection is that the Sheriff had charge of these collections and that the checks were turned over to the then Sheriff and the checks then turned over to me.

Q. As a matter of fact, didn't you receive this check from Ricardo, Regidor?

A. Now, I cannot say, it may possibly be so, it has been a long time ago and I cannot recollect.

Q. You had considerable negotiation with Ricardo Regidor about the affairs of Francisco Martinez didn't you?

A. Yes, sir, Regidor then seemed to have something to do with the settling of Francisco Martinez's matters at that time and probably, I do not know and can't say, but probably the checks were turned over to Regidor and by Regidor turned over to me. I can't say, I cannot recall it now.

Q. And did you personally cash this check?

A. My signature is there. I suppose I did.

Q. Do you recall how much you were paid for the check?

A. I cannot recall independent of the check, except by looking at the check.

Q. You do not know whether you were touched up for a discount or not?

A. I do not know, I don't think so, I don't think I would have permitted it.

87 Q. Referring to the 6400 peso check, was that delivered to you personally?

A. My best recollection is that I had that check in my hands and I think both checks were turned over at the same time, if I am not mistaken, I do not know.

Q. Do you remember who handed you this check of 6400 pesos?

A. I think the same party who handed the other; must have been.

Q. You think that was Ricardo Regidor?

A. No, I can't say; it may possibly be that it was Regidor, but my first recollection was it was the Sheriff, but I could be mistaken it is so long ago, I can't recollect it.

Q. What did the Sheriff have to do with the matter of Francisco and Pedro?

A. He was executing the order of the Court, there was an order of the Court at that time ordering the payment of that money to Pedro.

Q. You were attorney for Pedro Martinez during the entire year of 1903, were you and the first half of 1904?

A. I think so, yes, sir.

Q. I will ask you to state Mr. Montagne whether or not apart from the two checks which you have identified, have you received any other money from Ricardo Regidor?

A. In the Martinez cases?

Q. In that or any other matters during that time mentioned, 1903 and part of 1904?

A. I think not.

Q. Are you positive about that?

A. Well, I will have to qualify my answer to the best of my recollection; if you will allow me to explain, I did receive I think  
88 in the early part of 1904 some money from Ricardo Regidor for fees on another matter and I signed a promissory note to the Casa Comision for the purpose of enabling them to pay the money and subsequently the International Bank sued me and obtained judgment against me on those notes. That is my recollection, I do not recall now if I received any other money from Regidor; it may be, but I do not recall it.

Q. Do you recall receiving checks upon the International Bank signed by Pedro Cantero during the year 1903?

Judge ODLIN: Objected to; Pedro Cantero is not a party to this suit; he is a mere witness.

Mr. GALE: We will connect it up. We will show that Pedro Cantero, although he had an account of 40,000 pesos in the Bank never deposited a cent in the Bank but the money was placed there by Mr. Brown from the Francisco Martinez credit. We expect to show that the Cantero account with the Bank was completely fictitious; we have documents to show that the International Bank had in its possession, escrituras and notes of Francisco Martinez that aggregated 400,000 pesos or more and that the Cantero account was nothing more or less, than a step in the conspiracy, as charged in the answer and cross-complaint.

The COURT: With the understanding that it is made competent by other testimony or proof introduced in the record, objection overruled.

Judge ODLIN: Exception.

A. I do not recall now any.

Q. Do you recall being paid any sum of money by Regidor or any person in his employ during the year 1903 or early part of the year 1904, apart from the checks which you have identified  
89 here, the two checks, and the payment for which you say you gave notes to the Casa Comision, any other payments whatever?

A. Yes, I recollect one, but it is entirely independent of this Martinez matter.

Q. What was that transaction?

A. That is money, I think, from them probably about that time, for the Ricoy matter; and then I think I got some money from them for another client, I forget now the name; at that time the Casa Comision was engaged a good deal in loaning money, discounting paper and things of that kind.

Q. Do you recall the application of the Prosecuting Attorney for the City of Manila for the appointment of a guardian for Francisco Martinez?

A. Yes, sir.

Q. You intervened in that suit didn't you?

A. I did.

Q. In what capacity?

A. I was acting on behalf of Pedro Martinez.

Q. During that time did you have any consultations with Ricardo Regidor in regard to the matter?

A. I did.

Q. A number of consultations didn't you?

A. Yes, sir.

Q. And Ricardo Regidor was in your office constantly during that trial was he not?

A. Very frequently; a great deal of the time, yes, sir.

Q. And during that time Pedro Martinez, your client, and his father, Francisco, were constantly fighting each other in Court were they not, and various suits were pending between them at that time?

90 A. Various suits pending and had been pending for a long time prior to that time, but at that time they were on the eve of settling their differences.

Q. They were hostile to each other?

A. Had been.

Q. And are still?

A. They do not speak to each other, but so far as litigation is concerned, there is actually no litigation between them. Two of the cases have been allowed to go to sleep and are dead.

Q. And did you know at the time of those consultations of the relations existing between Ricardo Regidor and Francisco Martinez?

A. Well, only in a general way; the relation between Regidor and Francisco?

Q. Yes?

A. Only from representations made to me; of course I was acting for Pedro exclusively; Regidor, apparently, was acting for Francisco Martinez and for the Bank, apparently.

Q. For the International Bank?

A. Yes, sir.

Q. He engaged counsel did he not for the International Bank in that matter?

A. I could not tell you whether he engaged counsel himself but Mr. Waite, I think was one, and Mr. Azaola acted as counsel in that matter.

Q. In representation of the Bank?

A. Representing the Bank and also representing Francisco I think. No, let me correct that; Mr. Chicote came in and represented him subsequently.

Q. That was after the declaration of incompetency Mr. Chicote came in?

A. Yes, sir.

91 A. Yes, sir.

Q. He was also engaged by Ricardo Regidor was he not?

A. I do not know, I could not tell you that.

Q. And these consultations held by Regidor with you were for

the purpose of securing the appointment of a guardian that was satisfactory to Regidor, wasn't it, one that would do his will?

A. All purposes. (and witness continues)

Most of the consultations at that time were for the purpose of partitioning the estate between the father and son; and then we had some consultations regarding the appointment of a person suitable to all parties, that is, the Bank and Pedro.

Q. And Regidor was deeply interested in that was he not?

A. Apparently so, yes, sir.

Q. The partition of the Ilustre Estate had been accomplished and approved by the Court before the proceedings were instituted by the Prosecuting Attorney?

A. Yes, sir, but there were a lot of properties left unpartitioned.

Q. The Batangas property?

A. Yes, sir.

Q. All the Manila properties and boats had been partitioned?

A. Practically so, I think, with the exception of two or three pieces I think.

Q. And those two or three pieces were those in the possession of the Casa Comision were they not?

A. I do not know, I cannot tell you; they were pieces in which the father claimed to own them all and Pedro claimed to own one-half and that is why they were not included in the partition; we only included such properties as were not the subject of litigation between the father and son and no questions about.

Q. And the person who was finally agreed upon between yourself and counsel for the Bank and Regidor as guardian was P. J. Moore, was it not?

A. Yes, sir, I will explain:

Q. And he and Judge Waite had been counsel for Regidor for some time prior to that time, had they not?

A. I do not know.

Mr. GALE: That is all.

Redirect examination by Judge ODLIN:

Q. Do you know where Ricardo Regidor is now?

A. He is dead.

Q. And Senor Azaola, he has been mentioned; where is he?

A. He is dead.

Q. Which died first?

A. Mr. Azaola.

Q. Do you know about when Mr. Azaola died?

A. I was absent from the Philippines at the time and when I arrived here he was already dead.

Q. And when did you return to the Philippine Islands?

A. In the month of April, 1905.

Q. Then Senor Azaola has been dead at least a year more or less?

A. I think so, yes.

Q. And with regard to Senor Regidor, about when did he die?

A. I was not present at the time, I forget, but just a few months ago.

It is admitted by counsel for the respective parties to this litigation that Senor Azaola died about the middle of the year 1904 and Ricardo Regidor died about the middle of the year 1905.

Judge ODLIN: That is all.

93 Recross-examination by Mr. GALE:

Q. Did you not affect the partition between Francisco and Pedro Martinez of the property belonging to the Ilustre estate situate in Manila; did you not take part in that partition on behalf of your client, Pedro Martinez?

A. Yes, sir, the meetings were had in our office.

Q. What other persons besides yourself on behalf of Pedro intervened in that partition?

A. On behalf of Pedro?

A. No, on behalf of the other persons interested in it?

A. Francisco Martinez, Ricardo Regidor, Senor Azaola, Mr. Brown of the International Bank, Judge Waite, I believe, if I am not mistaken; I may be mistaken about him, I think he came in afterwards, though.

Q. In what capacity and in whose interest did Vicente G. Azaola and Ricardo Regidor intervene?

A. Well too, Judge Early of Early — White also had something to do with the partition.

Q. Messrs. Early — White represented Francisco Martinez didn't they?

A. Yes, sir, Francisco Martinez.

Q. And Mr. Regidor and Mr. Azaola represented the International Bank didn't they?

A. Yes, sir, I remember Mr. Azaola being partly the attorney for the Bank, I think. Of course the Bank had an interest in the property at that time, claimed an interest rather in the property. It seemed to have a lien over the whole of the properties, if I recall correctly, and as Pedro did not owe anything to the Bank,  
94 we desire to have the Bank change its loan from the property that went to Pedro and put it all together into the properties of Francisco and that is how the Bank intervened in that matter.

Q. This partition was effected in May of 1903 and approved by the Court the first part of June, wasn't it?

A. I cannot tell you without looking at the papers; the date of the papers is correct, whatever that may be. I made a guess the other day in Court and missed it by two years and I do not want to make a mistake again.

Q. The escritura of partition or agreement of partition bears the date of June, 1903, is that correct?

A. That is correct.

Q. This Vicente G. Azaola you mentioned is the same Azaola who was sub-manager of the Casa Comision?

A. Yes, sir.

Mr. GALE: That is all.

Redirect examination by Judge ODLIN:

Q. I will show you the record in case No. 2230 of this Court and call your attention to folios 333 and 338 inclusive and will ask you to examine same and state to the Court whether or not that is the record of the proceeding to which you have just testified in your examination as to the partition proceedings?

A. Yes, sir, that is the record of the proceedings of the partial partition of the property of that estate that I have reference to.

Q. Look at the order of the Court approving it and state the date thereof?

A. 15th day of June, 1903.

95 Q. On page 334?

A. Yes, sir.

Judge ODLIN: We offer in evidence that part of the record in case No. 2230 which is found at folios 333 to 338 inclusive as Plaintiff's Exhibit.

Mr. GALE: No objections.

The COURT: Let it be admitted.

Judge ODLIN: The plaintiff offers in evidence the agreement between Francisco Martinez and the International Bank a corporation, dated June 15, 1903, signed by Francisco Martinez and R. W. Brown and two witnesses, acknowledged before Vicente G. Azaola, who was then a notary public, being the original, as Plaintiff's Exhibit "C."

Mr. GALE: Objected to as immaterial, in that the so-called contract does not lay any foundation or form any basis for the action against the defendant as set forth in the complaint, the so-called contract offered in evidence being nothing more or less than an agreement on the part of Francisco Martinez to transfer to the International Bank certain properties at the prices therein fixed and does not constitute a mortgage or lien upon the property and does not form a basis for a demand for a money judgment but simply gives rise to a personal action if any, for the specific performance of said contract.

The COURT: The question as to what effect the document will have is a question of law to be determined by the court. Let the document be filed as evidence to be considered by the Court.

Mr. GALE: Exception.

96 FRANCES DE SILVA, a witness for the plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. Frances de Silva, Santa Mesa Heights, clerk; 33 years of age.

Q. What is your occupation?

A. Clerk in the International Bank.

Q. How long have you been connected with the Bank?

A. Since the 14th of July, 1902.

Q. Have you in Court the original book in which the current account with depositors was kept by the International Banking Corporation in 1902 and 1903?



A. Yes, sir.

Q. Will you please produce that book?

A. Yes, sir.

Q. Please examine that book and see if you find any record of a current account with Francisco Martinez?

A. Yes, sir.

Q. At what page in the book do you find that account?

A. Page 96.

Q. Please state to the Court the date of the first entry on that page?

A. January 20th, 1903.

Q. Please state to the Court the last entry on that page?

Mr. GALE: Objected to and to any reference to the book as no proper foundation has been laid for their admission and it has not been shown that they have been properly stamped or proper books of account as required by the Commercial Code.

97 Further, they can only serve as a memorandum to refresh the recollection of the person who made the entries, but they have no value as proof unless the formalities required by law in their keeping have been complied with.

Judge ODLIN: We propose to prove who made those entries and that the person who made them is not within the jurisdiction of this Court and we propose to offer them in evidence. The object of the evidence is to show how much he owes. The best evidence of that, in addition to the checks themselves, is the books. Plaintiff's counsel desires it to appear of record that another object of presenting this testimony now is, in order to show the amount due the plaintiff.

The COURT: I will permit you to examine this witness on the question of this account and I will reserve my ruling and pass upon that question in determining the case.

Mr. GALE: Reserving us an exception in case of adverse ruling.

Q. I have understood you to say that the first entry is under date of January, 1903, page 96, and the last entry is what date?

A. 31st of March.

Q. Of the same year?

A. Yes, sir, 1903.

Q. Do you know in whose handwriting those entries are?

A. Yes, sir.

Q. State?

A. John Montalto, who is in Hongkong.

98 Q. What position, if any, did Juan Montalto occupy at that time?

A. Current account clerk.

Q. In what institution?

A. International Banking Corporation.

Q. How do you know Juan Montalto is now in Hongkong?

A. I saw him in 1904 in Hongkong and he was very sick.

Q. Do you know what his business was in Hongkong?

A. No, at that time he was not employed.

Q. Have you seen him since?

A. I have not.

Q. Please state whether there are any entries in that book except page 96 which refer to the account between the Bank and Francisco Martinez?

Mr. GIBBS: I would like now to object further to the introduction of the evidence, as they have not shown any attempt to secure the presence of the person in whose handwriting these books appear in his deposition.

The COURT: Ruling reserved.

Mr. GIBBS: Saving us an exception.

Q. Are there any entries in that book affecting Francisco Martinez except on page 96?

A. No other entries.

Q. Have you in Court any book of the International Banking Corporation which contains the current account between the Bank and Francisco Martinez after March 31, 1903?

A. Yes, sir.

Q. Kindly produce that book?

A. Yes, sir, here is another book (producing same).

Q. What book have you now before you?

A. Current account book.

Q. Of what institution?

A. International Bank.

Q. At what page are you looking?

A. 427.

Q. What do you find at that page?

A. Account of Francisco Martinez.

Q. What is the date of the first entry?

A. April 8, 1903.

Q. What is the date of the last entry?

A. September 26, 1903.

Q. Do you know in whose handwriting those entries are made?

A. The same person.

Q. Have you any book in your possession in which the original current accounts were kept between the International Banking Corporation and Francisco Martinez subsequent to September, 1903?

A. Yes, sir.

Q. Please produce it?

A. Here it is.

Q. At what page are you looking?

A. 519.

Q. What account?

A. Of Francisco Martinez.

Q. What is the date of the first entry?

A. September 30, 1903.

Q. What is the date of the last entry?

A. May 31, 1904.

Q. Do you know in whose handwriting the entries are made?

A. The first entries in the handwriting of Juan Montalto.

Q. What about the subsequent entries?

A. The one of date 31st of December is in the handwriting of Mr. Ortigas.

Q. Who is he?

100 A. He is in Court.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. Are these the books of original entry of the Bank?

A. The handwriting is the *the* original entry.

Q. Take the entry, "By balance of Check No. 15972" second item appearing on page 519; is that the first entry made by the Bank of that transaction?

A. Yes, sir.

Q. And where did the Clerk get his information upon which he made that?

A. From the check.

Q. Who gave him the check?

A. I do not know.

Q. Who would give him the check; don't you have any system there?

A. The party who cashed the check.

Q. The party who cashes the check gives it to the book-keeper and he enters it there?

A. Yes, sir.

Q. It does not go to anybody but the book-keeper?

A. I do not know whether it goes direct to the book-keeper or to the manager.

Q. Do the checks go to the manager?

A. Sometimes.

Q. Then they do go to somebody besides the book-keeper?

A. Yes, sir.

Q. Do all checks go to the manager?

A. No, sir, they go to the window and present them for registry.

101 Q. Then where does it go to?

A. To the cashier, probably.

Q. Whom does it go to when presented at the window?

A. Book-keeper.

Q. And where entered then?

A. In the book.

Q. What book?

A. Current account book.

Q. And the cashier approves the check and makes the payment upon the approval by the book-keeper does he?

A. Yes, sir.

Q. Were any checks on this account paid that way?

A. I do not know about that.

Q. Do you know anything about Francisco Martinez's account?

A. No, sir.

Q. Never had anything to do with it?

A. No, sir.

Q. Who was manager of the Bank at the time Francisco Martinez' account on the books was made which you have identified?

A. Mr. R. W. Brown.

Q. Do you know who this Francisco Martinez is?

A. Yes, sir.

Q. Who is he?

A. I know him by name and saw him come in the Bank.

Q. Did you ever transact any business of the Bank with him?

A. No, sir.

Q. Anybody else transact any business with him in the Bank side from Mr. Brown?

A. No, I do not think so.

Q. What was your duty in the Bank during this time covered by this account?

A. Clerk.

Q. What kind of clerk?

02 A. Book-keeper.

Q. Did you have charge of all the books?

A. Not exactly, no.

Q. What books did you have charge of?

A. Drafts and bills.

Q. Did you have charge of the loans?

A. Yes, sir, loans.

Q. Now, did you ever make any entry in the book of the Bank concerning Francisco Martinez' account or concerning Francisco Martinez?

A. Yes, sir.

Q. Where did you get your information from which you made them?

A. From Mr. Brown.

Q. Isn't it true that every check that was drawn against that current account had to contain the initials of Mr. Brown before it was paid?

Judge ODLIN: We admit that Mr. Brown or some officer of the bank had to initial it before the cashier paid it.

Q. Don't you know as a matter of fact that not a check was cashed nor a transaction had with Francisco Martinez on the part of Mr. Brown or the Bank without the approval consent and intervention of Ricardo Regidor?

A. I do not know.

Q. Don't you know that people holding Francisco Martinez' checks drawn upon his account in the Bank were sent by Mr. Brown to Ricardo Regidor and the payment of the check refused?

A. No, sir, I do not remember that.

Q. Don't you know that it occurred?

03 A. No, I do not know.

Q. What do you call those three books which you have identified?

A. Current account ledger.

Q. And what is the purpose or office of those books in the Bank? For transactions of the Bank?

A. For registering checks and deposits and paying out deposit money.

Q. Of all your depositors?

A. Yes, sir, of all depositors.

Q. Have you a book known as the "Securities Book"?

A. The Bank has a Securities Book.

Q. Who keeps that book?

A. Either the Accountant or manager, I suppose. I do not know; it does not come to my hands.

Q. Any of those Securities Books destroyed while you were in the Bank?

A. I do not know; I never saw them.

Q. They are kept entirely by the manager?

A. They are kept by the manager; there might have been other books which I do not know.

Q. Are not all the Securities taken by the Bank regularly recorded in a book called the "Securities Book" of the Bank?

A. No; they might have a book in which is kept the securities, I do not know.

Q. But answer the question; isn't every obligation or document taken by the Bank as security entered in what is known as the "Securities Book"?

A. That is what I told you; there might be, I do not know.

104 Q. That is all kept in the regular book-keeping of the Bank?

A. No, sir.

Q. And never has been since you have been in the Bank kept in the regular Book-keeping Division?

A. No, sir.

Q. You never made any entry in either one of the three books of the Martinez account?

A. No, sir.

Q. In what book are the entries contained which you made of the Francisco Martinez transactions?

A. The entries I made in the Loan Book.

Q. Is that book in Court?

A. It is not.

Q. Look at two notes dated Manila, April 6, 1903, one for 8,000 pesos and the other for 16,000 pesos; I will ask you to refer to the stamp of the International Bank appearing on those notes and state whether that is the stamp of the International Bank used by them?

A. Yes, sir.

(Marked Exhibits 25 & 26 for Defendant.)

Q. Do you know who put that on there?

A. No, sir, but I think that is the handwriting of Corminia.

Q. Who is he?

A. Clerk of the International Bank before, but he has left.

Mr. GALE: That is all.

Re-direct examination by Judge ODLIN:

Q. Do you know anything about the business of the Bank, except as concerns your own duty?

A. Only my own work.

Judge ODLIN: That is all.

105 JOAQUIN B. ORTIGA, a witness for the plaintiff, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. Joaquin B. Ortiga, Calle Paz, 447; Clerk in the International Bank.

Q. How long have you been employed in that Banking Corporation?

A. Since October, 1903.

Q. Examine the book in front of you and state what it is?

A. One of the current account books.

Q. Of what concern?

A. Of the International Bank.

Q. What do you mean by current account book; describe the nature of the book?

A. It is a book in which entries are made from deposits and checks.

Q. Please examine that book and see if you find any current account with a party by the name of Francisco Martinez?

A. Yes, sir, here it is.

Q. What page?

A. 519.

Q. What is the date of the first entry on that page?

A. September 30, 1903.

Q. What is the date of the last entry?

A. May 31, 1904.

Q. Who wrote the first entry on that page?

A. The first handwriting is in the hand of a man formerly in the Bank, Mr. Montalto.

106 Q. Who made the other entries?

A. My own handwriting appears on this page and aside from that, there is another handwriting here also of March 31.

Q. Do you know in whose handwriting the entry of March 31 is?

A. Yes, sir.

Q. Whose is that?

A. I think of Mr. Boas.

Q. The entry of April 30 is in whose handwriting?

A. Mine.

Q. And of April 29th?

A. Mine.

Q. May 31st, whose?

A. Mine.

Q. May 31st "Balance transferred to new ledger"?

A. Mine.

Q. What is the amount of the last item?

A. 158,066.42.

Q. Mexican or Conant?

A. Mexican.

Q. I hand you now a book and ask you what it is?

A. We call this a pass-book; it is a copy of the current account.

Q. Who made it?

A. My handwriting.

Q. Under whose direction did you make that book?

A. Of the Accountant.

Q. When did you make that book?

A. I do not remember.

Q. What year?

A. Must be of last year.

107 Q. On this page 519, with the exception of the first item, which you say is in the handwriting of Mr. Montalto, and the entry of March 31st in the handwriting of Mr. Boas, I understand you to say that all the other entries are in your handwriting?

A. Yes, sir.

Q. I find in this pass-book you say you made one item which is later than the last item on page 519; this item is of date, June 9th in the pass-book?

A. Yes, sir, because this account was continued in another book; there is another book.

Q. What is the amount of this entry of June 9th in the pass-book?

A. 311.85 pesos.

Q. What does that represent?

Mr. GALE: Objected to as immaterial and calling for the conclusion of the witness and his opinion and not the best evidence.

Judge OBLIN: I propose to offer this as a correct transcript and there is a variance and I want to explain that entry in the pass-book; I will offer the pass-book in evidence.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. It is the interest up to that date.

Q. Between what dates?

A. Must be from the 1st of June to the 9th of June.

Judge OBLIN: I will ask you if you will admit this is a true transcript from the Books of the Bank, this pass-book, reserving all questions as to its competency?

Mr. GALE: We will examine this pass-book and compare it with the books of the Bank later. We will verify it and if  
108 we find it is correct we will admit it is a copy.

Judge OBLIN: That is all.

Cross-examination by Mr. GALE:

Q. The item of December 31 is the first item in your handwriting?

A. Yes, sir.

Q. Where did you get your information from which you made that entry of that item?

A. From memorandums from which these entries are taken.

Q. Who made the slips?

A. At that time those slips were prepared sometimes by the manager, by the accountant and sometimes by the cashier.

Q. Do you remember who gave you the memorandum of that entry of December 31st?

A. No, sir.

Q. Is there anything about that entry of December 31st unusual?

A. I don't find anything irregular in that, because they are simple entries, copies of the slips.

Q. What is done with the slips after you enter up the entries?

A. We used to file the slips and another person would take them from the file and enter them in another book and then I do not know what became of the slips.

Q. Is it customary for you in the Bank to pay checks by installments?

A. I have never seen any case of that; no, except when the Cashier sometimes does that.

Q. Can you explain then how it comes there is an entry here of "balance of check, so and so"?

A. This was copied from the slip and on the slip it must  
109 appear so.

Q. Then, as a matter of fact, the original transaction is made upon slips of the officers of the Bank and this book is simply a copy of those slips of the memorandum of the original transaction made by you, isn't that true?

A. Yes, sir.

Q. Then the original entry of the transaction is made on the slips referred to?

A. Yes, sir, from the slips to the book.

Q. This item of December 31, "To check No. 15972, 30,000 pesos" is that in your handwriting?

A. Yes, sir.

Q. Where did you get your information to make that entry?

A. From the check itself.

Q. How did the check come to you?

A. The checks were sent to me either by the cashier or the accountant or the manager of the Bank.

Q. For what purpose are they sent to you?

A. To register them in the books.

Q. And did you have anything further to do with the checks with the payment of checks than the simple registry of them?

A. Nothing but to enter them in the books.

Q. I hand you check dated June 21, 1903, for 30,000 pesos state whether or not you have seen that check before?



A. Yes, sir, I did; there appear the folio on it which I wrote myself.

Q. Is that the check entered here under date of December 31?

A. Yes, sir.

Q. How does it happen that the check was entered in the book under date of June 21st?

A. The dates appearing on this check are dates on which  
110 checks are presented to the Bank, but not the dates of the checks themselves.

Q. You mean, dates upon which the slips are handed to you or checks are handed to you?

A. Yes, sir.

Q. Whose initials are these on this check?

A. Mr. Brown's.

Q. Whose handwriting is that "December 31-03" on the back of the check?

A. I do not know.

Q. Is that Mr. Brown's?

A. I think not, I am not sure though.

Q. Do you know the handwriting of Ricardo Regidor?

A. No, sir.

Q. How many entries or items are there on this page 519?

A. Thirteen.

Q. And how many different handwritings appear there?

A. Three.

Q. Who was the manager of the Bank during the time covered by the account on page 519?

A. Mr. Brown.

Q. Robert W. Brown?

A. Yes, sir.

Mr. GALE: That is all.

GUSTAVE THOMAS BOAS, a witness for the plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. Gustave Thomas Boas, live in Manila, sub-accountant of the International Banking Corporation, Manila Branch.

111 Q. How long have you been connected with the International Banking Corporation?

A. Approximately two and a half years.

Q. There is a book in front of you; please state what it is?

A. It is the current account ledger of the year 1903 and a portion of the year 1904.

Q. Of what institution or concern is that book?

A. The International Banking Corporation, Manila Branch.

Q. Please turn to page 519?

A. Yes, sir.

Q. Is there any of your handwriting on that page?

A. There is.

Q. Please give the date?

A. On March 31, 1904.

Q. What is the amount of that item?

A. 1065.47.

Q. Why did you make that entry?

A. It represents as pointed out here, interest to date on the account, page 519.

Q. For what period of time is that interest computed?

A. From February 29th of that year until March 31st of that year.

Q. In other words, it is one month's interest?

A. Yes, sir.

Q. Now, that interest is computed on what amount?

A. On the balance.

Q. What balance?

A. 151,927.40.

Q. Please state to the Court the rate of interest?

A. Eight per cent.

Q. Per annum?

A. Yes, sir.

112 Q. Is that conant or Mexican money?

A. It is Mexican.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. Did you make that entry of your own volition, or under direction of some officer of the Bank?

A. It is our custom at the end of the month to charge up the interest on account.

Mr. GALE: That is all.

Witness W. H. TAYLOR, recalled by the plaintiff.

Direct examination by Judge ODLIN:

Q. When you testified before, I believe you referred to what has been called the "pass-book"?

A. Yes, sir.

Q. Is that same pass-book now in your hands?

A. Same pass-book.

Q. I will call your attention to an entry in this so-called pass-book under date of July 10th, 1903, and ask you to explain that entry, if you can?

Mr. GALE: Objected to as no foundation has been laid for its admission: and because the book has not been admitted and is not admissible in evidence, and is hearsay.

The COURT: Objection overruled. If I hold that the books are not admissible, then of course this evidence goes out.

Mr. GALE: Exception.

Judge ODLIN: Question withdrawn.

113 Q. I will ask you to look at the entry in the current account book under the date of July 10th, 1903; explain to the Court the particulars of that entry so far as you are able to do so?

Mr. GIBBS: Objected to for the reason that the books have not been properly identified and are not in evidence and are not admissible; if the books were admissible, they would be the best evidence.

The COURT: Objection overruled; I have already ruled as to that.

Mr. GIBBS: Exception.

A. July 10th, entry of "balance of pagare 20,250 debited as 20,000" the entry is 250 pesos Mex.

Q. Can you explain to the Court how that happened?

Mr. GIBBS: Objected to as the books have not been properly identified and are not in evidence and are not admissible and not the best evidence; it is also immaterial.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. The answer obtains in the entry itself; the pagare is for 20,250 pesos and was originally debited as 20,000 and not being able to balance the book, we went back and proved up and found the mistake and the entry was made, the entry was corrected. The books are balanced regularly once a week.

Q. What pagare was referred to there?

A. I cannot say.

Q. Is there any such pagare in the possession of the Bank now?

A. No, sir, the pagares are all surrendered on payment.

114 Q. Please explain to the Court whether there is any distinction made in the business of the Bank with regard to promissory notes executed by clients of the Bank with regard to the surrender of said notes, no matter what form the payment takes?

Mr. GIBBS: Objected to as immaterial, incompetent and irrelevant.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. It was formerly the custom of the Bank whenever a pagare was paid, no matter the form of payment, to surrender the pagare, even if a new pagare was given in renewal, but I made it a practice to keep the old pagare cancelled until the total pagare was cancelled, because this question came up.

Q. When was this rule of the Bank changed?

A. On August 16th, last.

Q. Then as I understand it, a person who borrowed money from the Bank and gave his promissory note therefor, and afterwards paid that promissory note by means of a check, received the promissory note back?

A. That was the custom in the Bank in former times.

Q. And it made no difference whether the check was drawn against an actual account or against an overdraft?

A. No.

Mr. GIBBS: Objected to as immaterial and for the further reason and special reason that the custom of the Bank is entirely immaterial

and not binding upon the defendants in this action. The Commercial Code fixes the rules by which business transactions shall be conducted.

115 The COURT: I think the question is admissible.

Mr. GIBBS: Exception.

Q. But now you hold the old paper back but mark it "paid"?

A. Mark it cancelled.

Q. Does it make any difference whether that check is drawn against an existing balance or against an overdraft?

A. No, sir.

Q. How long did you say you had been connected with the International Banking Corporation?

A. Almost three years now.

Q. Did you ever see any promissory notes signed by Francisco Martinez during that time?

A. Not in the Bank, no, sir.

Q. Examine the entry which is found in the book of current accounts under the date of December 31, 1903, the amount of 30,000 pesos?

A. Yes, sir.

Q. Please explain that entry?

Mr. GIBBS: Objected to as no proper foundation has been laid, the books have not been offered in evidence and are inadmissible and if admissible, they would be the best evidence.

The COURT: Let him answer; I have reserved my ruling on that question.

Mr. GIBBS: Saving us an exception.

A. The entry here has already been stated; the check of 30,000 pesos was given in payment of a loan; the credit of December 31st, against which is the entry "by balance check No. 15972, is a surplus arising from that check of 30,000 pesos after the obligation  
116 as a loan was liquidated; in other words, if you subtract 1401.13 pesos Mex. from the 30,000 pesos you would get the amount of the loan that was paid; the check was given in payment and was more than sufficient to cover the amount of the indebtedness, so the amount was credited on the account, the difference; they do that, or pay him in cash.

Judge ODLIN: That is all.

Cross-examination by Mr. GIBBS:

Q. Was this loan you say was paid by the check of 30,000 pesos credited in the account current?

A. The loan credited?

Q. Charged I mean?

A. Charged in account current on December 31.

Q. What loan was it?

A. Loan against the "Germana."

Q. The one that forms the basis of the suit?

A. Yes, sir.

Q. Then that is paid?

A. The form of the obligation was changed.

Q. It is paid by that check and included in the account current against Martinez?

A. Yes, sir.

Q. Then why was not the obligation paid by it surrendered?

A. Because the obligation was not paid, but simply the form of the obligation was changed and the S. S. "Germana" was held against the loan.

Q. Isn't that 30,000 pesos included in the account current as a charge against the defendant?

A. Included on December 31, the date the entry was made.

117 Q. Isn't it included in this action 3365?

A. I do not know about that, you will have to ask my attorney.

Q. You have not answered the question directly; the facts remains that this obligation, although paid, was never surrendered to the defendant?

A. I do not know about that.

Q. If it was surrendered, it is made the basis of this other action?

A. I do not know about that.

Q. Calling your attention to an endorsement in blue indelible lead pencil, 31st of December, '03, on the back of this check for 30,000 pesos, I will ask you to state if you know whose handwriting it is?

A. No, I do not know.

Q. Look at it and see if it is not the handwriting of Brown?

A. No, sir, that is not. I recognize the handwriting now.

Q. Whose is it?

A. A man by the name of McClellan, formerly sub-accountant and now in Singapore; he is the man who sorted the checks up; D. J. McClellan.

Q. When did you first discover that there was a balance due from the payment of this loan in favor of the defendant which should be credited to his current account of 1,401 pesos?

A. What?

Q. When did you discover he was entitled to this balance of 1401 pesos?

A. It was discovered on the day the entry was made, the entries are simultaneous; the entries are right next to each other in the book.

Q. Under whose directions did you apply this check to the payment of that loan?

118 A. I was not in Manila at the time; I would like to state, if your Honor please, Banking customs here in connection with these things.

Mr. GALE: We do not want any banking customs explained; we are not bound by any banking customs.

Judge ODLIN: But when they charge the Bank with fraud, it is competent to prove the customs of the Bank.

Mr. GALE: If the witness was not here at the time, how can he prove it.

The COURT: I do not think the explanation is necessary.

Mr. GIBBS:

Q. The only knowledge you have that it was applied to the loan was the notations made there by some other book-keeper in that book?

A. Yes, sir, also by the crossing on the check which says, "fixed loan," if you will read it.

Q. Who made that memorandum "fixed loan" on there?

A. Mr. Brown.

Q. Do you know where he got his authority for charging it to that loan or crediting it to that loan?

A. Mr. Brown got his authority for crediting the check to the loan?

Q. Yes?

A. When any check is given in settlement of an obligation, it is taken generally as authority of the man giving the check that it is to be applied to that loan.

Q. How do you know it was given in settlement of a loan?

A. From the crossing of the check which says "fixed loan" and refers to the loan book in court, that it was applied to the loan on the same day.

119 Q. Does that appear in the extract that you gave?

A. No, sir, that is a settled account. It does not incur in the indebtedness of Francisco Martinez; the loan of 30,000 pesos was closed and the obligation transferred to the overdraft and does not appear twice.

Q. So the extract of loans, from which you refreshed your memory here and which includes this loan you claim to have been paid, does not show the credit of this 30,000 peso check?

A. I beg your pardon, it does not include this loan, it simply includes outstanding loans; loans against real estate included in that transcript.

Q. Then there is no loan against the "Germana" shown in the books of the Bank?

A. No loan that is outstanding.

Q. Have you looked up your securities books with reference to the loans to Francisco Martinez?

A. Yes, sir.

Q. Do those show the various transactions between Martinez and the Bank from the beginning to the close of their transactions?

A. Are you referring to the loans?

Q. Yes?

A. Yes, the loans securities are entered contemporaneously with the loans.

Q. You found the securities book did you?

A. The security is right in the loan book; the loan book in current use.

Q. Have you found any of the documents or instruments of security other than this produced here in Court?

120 A. All the documents we hold are now in the hands of our lawyer, except an insurance policy which lapsed and we have a new insurance policy; the mortgages and escrituras are in the hands of our attorneys.

Q. Then your Securities Book shows the document of the 15th of June, 1903, does it?

A. I am talking about the loans, I cannot tell you about the blanket mortgages.

Q. Under the former system you spoke of, taking a renewal note and returning the old ones, did you cancel the old ones at the time they were returned?

A. No, sir.

Q. You never did such a thing as to take a renewal note and retain the old one uncanceled did you?

A. The Clerk had specific instructions to cancel all notes; it may be that it happened at some time that one was held that was not cancelled, but the whole thing was surrendered upon payment of the obligation.

Q. You do not know what Brown's system was in reference to the promissory notes and instruments with Martinez do you?

A. No, sir, at that time I was simply sub-accountant and did not know anything about the securities; nobody does in the Bank except the manager and the accountant.

Q. Did you state that checks were sometimes given to pay overdrafts?

A. Not to pay overdrafts, no, but to pay obligations. Checks which created the overdraft; I will illustrate on yesterday an illustration came up which is identically the same transaction as this 30,000 pesos and I can explain it to the Court——

Mr. GIBBS: I object.

The COURT: Just state how the transaction occurred.

121 A. A man is importing goods against which he wants a loan we take his warehouse receipts as security for the loan and also *vales* due on a certain day; he pays that loan by check on his account and gets delivery of the goods and his account may have been running along; in any case it transfers the obligation from a loan account against the warehouse receipts, to his overdraft account which the same security is held for; as he needs his security and as he gets his cash, he gives his check or pays the cash on his account and obtains the security; when the credit is finally disposed of his overdraft is liquidated; that is the same transaction as this; it is common everyday practice.

Q. You make the loan and then require the debtor to draw a check against his current account to pay?

A. Yes, sir, pay the loan, but we do not surrender the security.

Q. So that the loan for which the security is given is paid?

A. The loan is paid, but the same security is held against the check which he gives on his overdraft.

Q. And it does not make any difference whether the security is given to pay the specific loan or not, it is still held as security for the current account?

A. Yes, sir, that is right.

Q. Have you ever before sued on a security given to secure a loan and established the obligation by virtue of the current account?

Mr. ODLIN: Objected to as not being the best proof; let the records be produced.

The COURT: Objection sustained.

122 Mr. GIBBS: Exception.

Q. You have looked up, have you not, the current account of Pedro Cantero?

A. Yes, sir.

Q. I call your attention to checks and slips marked Defendant's Exhibits 27 to 32, inclusive, and ask you to state whether or not these checks entered into the current account of Pedro Cantero?

Judge ODLIN: Objected to because Pedro Cantero is not a party to this suit, merely a witness; no dealings between Pedro Cantero and the Bank are in controversy here.

Mr. GIBBS: This is offered for the purpose of corroborating the testimony already given and which may hereafter be given as to the conspiracy between Regidor & Brown and Cantero and others to defraud the defendant of his property and it will appear that one of these checks for 8250 pesos, of the 26th of March, 1903, by Lorenzo del Rosario, was in connection with certain gambling notes secured and turned into Pedro Cantero's account, showing direct connection between Brown by the fact that one of these checks is drawn by Ricardo Regidor for 7,587.68 pesos and a counter check drawn by Mr. Brown himself for the same account and afterwards credited in account current of Pedro Cantero. We will show that Pedro Cantero was a mere tool in the hands of Brown and Regidor in the fleecing of the old man, this defendant, and that he had absolutely nothing to do with this account current except as he was directed by Regidor and Brown and that this money paid into the account of Cantero is the proceeds of cheating the old man, this defendant, right along at the same period of time.

123 The COURT: Who are the checks drawn by?

Mr. GIBBS: One by Del Rosario on the International Bank, marked transferred and the slip shows it was transferred to the account of Pedro Cantero.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I had a statement of Pedro Cantero's account made up and handed it to Mr. Gibbs and I do not remember what these entries are.

Q. I have an account here if you want to see it (handing paper to witness)?

A. I never saw that before, I do not even know the handwriting on this account.

Q. Look at the slips themselves in connection with the checks; don't they show on their face that those two sums were deposited to the account current of Pedro Cantero?

A. There were two amounts which correspond to the amounts on the checks.

Q. Don't the deposit slips show they were deposited to the current account of Cantero?



A. The deposit slips of Pedro Cantero contain a similar amount, but whether they are the same amount I do not know.

Q. Do you know what "postpone payment account" is here as shown on Exhibit 29 of the Defense?

A. Yes, sir.

Q. What is that?

A. It is the same as a cashier's check or outstanding check, which it is called by some.

Q. In whose favor is that "postpone payment account"?

A. Bank account.

124 Q. That is issued the same as a certified check isn't it?

A. Same as a cashier's check.

Q. And that is in favor of Regidor?

A. The check itself shows.

Q. Referring to the statement made out by you, please state what the gross receipts from properties held by the Bank of Francisco Martinez are?

A. The gross or net?

Q. Gross?

A. 29,281.93 pesos.

Q. What is the description of the properties held in the possession of the Bank belonging to Francisco Martinez?

A. Detailed?

Q. Yes.

A. 135-139, 79-83 Barcelona; 24 Calle Penarubia; 98-100 Calle Principe; 141-5 Calle Sevilla; 68-76 Calle Lavisares; 31-37 Calle Jaboneros; S. S. "Germana"; the "Balien" is not included in this because it did not come in this suit; I do not know whether you want it or not.

Q. You also hold in your possession the boat "Balien"?

A. Yes, sir.

Q. You do not know how much you received from that?

A. We paid out on that 7,000 pesos more than we received.

Q. What is the gross receipts, do you know?

A. No, sir, they are very small; she has been laid up by the customs authorities for almost two years.

Q. Have you not two other pieces of property in your possession belonging to Francisco Martinez, not included in this statement?

A. Not that I know of.

125 Q. Do you know of any property on Calle Limery?

A. Yes, sir, we own a property on Calle Limery.

Q. You own it?

A. We do as far as I understand.

Q. Did that belong to Francisco Martinez formerly?

Judge ODLIN: Objected to for the reason that the pleadings in this case do not show that the plaintiff claims any lien on any property on Calle Limery; we are not seeking to enforce, even if the Bank has a claim upon the property on that street, in this action. Object to the question because it is immaterial.

The COURT: Objection sustained.

Q. Do you know how all these checks to which you have formerly

testified and which you say are set out in the pass-book happened to be initialed with the date of July 12th by "T. C. K."?

A. Yes, sir, each one of these checks was checked up carefully with the books by Mr. Kinney and Mr. McClellan, both of which initials were put on each check.

Q. What was the occasion of checking them up?

A. When Mr. Lee came down he gave instructions to check up everything.

Q. Were all of the checks in the Bank initialed in that way by Mr. Kinney?

A. No, sir.

Q. Then why were these particular checks initialed that way as contradistinguished from all the others?

A. I do not recall exactly the date this suit was brought, but I think it was after the suit was brought the checks were gotten together.

126 Q. The suit having been brought in February, 1905, what is your explanation then for this check being July 12, 1904?

A. We were checking up everything of that character at that time.

Q. What do you mean by "that character"?

A. Everything in connection with the overdraft for which the security was not in the regular way.

Q. What was the irregularity about this transaction of Martinez?

A. You will find out I think, if you will compare the mortgages, you will find the registration of the description of the property does not tally, boundary lines, etc. I might add that one of the properties you cannot tell whether it belongs to Francisco or Pedro; it is in the possession of neither Pedro nor Francisco.

Q. Are there any other cases outside the claim against Martinez where the checks were checked up in this manner by the attorneys of the Bank?

A. I do not know whether they bear the initials, I have several different parcels of checks in my possession.

Q. Isn't it a fact that the work that was done, checking done by T. C. Kinney was in July, 1904, July 12th, and along at that time was confined to this Martinez and Casa Comision litigation and transactions?

Judge ODLIN: Objected to; Mr. Kinney would be the best witness to prove that.

Mr. GIBBS: If the witness knows he can state.

The COURT: Certainly, if he knows; objection overruled.

Judge ODLIN: Exception.

Q. Don't you know that the work at that time — was done by Mr. Kinney for the Bank was confined practically to this business of Martinez and to the claim against the Casa Comision?

A. No, I do not.

Q. You may state whether on arriving in Manila you discovered any irregularities in transactions appearing in the books of the Bank between Brown and Regidor?

Judge ODLIN: Objected to, unless it is connected with Mr. Martinez; it is objected to in the present form because it does not call for, and it is not proper to call for any transaction unless Francisco Martinez is interested.

The COURT: Objection sustained upon the ground that you cannot go into different accounts here to ascertain whether or not they are fraudulent. If there have been any suits instituted and fraudulent acts have been established, I will permit you to introduce those records and show it is the same Brown, the same Bank and the same Ricardo Regidor.

Mr. GIBBS: Exception.

Adjourned until 2:30 P. M.

Proceedings Held March 6th, 1906, at 2:30 p. m.

Same appearances:

Witness TAYLOR on the stand.

Cross-examination continued by Mr. GIBBS:

Q. Have you investigated your books to ascertain the numbers borne by the check books issued to Ricardo Regidor?

A. Yes, sir.

Q. Please state what those numbers of the check books are?

A. From the checks debited to the account, it appears that check books were issued to Ricardo Regidor bearing the numbers 128 14821 to 14850, although the first check I find is 14828; the check books run in books of 50, numbering 1 to 50; second book, 23,651 to 23699; and 24151 to 24199.

Q. And as to the checks issued to Caridad Muguruza, the widow of Ricardo Regidor?

A. From the books debited to her account, it appears that check books were issued bearing the numbers 30,651 to 30,699 and 24251 to 24299.

Q. Do you know when the account was opened in your Bank in favor of Lorenzo del Rosario?

A. Appears to have been opened December 1, 1902.

Q. And in favor of Ricardo Regidor?

A. November 7, 1902.

Q. Have you investigated as to whether or not the checks mentioned in your examination this afternoon and deposit slips, Defendant's Exhibits 27 to 32, inclusive, enter into the account current of Pedro Cantero?

Judge ODLIN: Objected to as it in no way shows they were connected with the Martinez case. Plaintiff objects to any evidence concerning these checks, it not being shown that any connection exists between them and the defendant, Francisco Martinez or his guardian.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. The credit slips in the name of Pedro Cantero dated 16th of

March and 8th of April, are credited to the account of Pedro Cantero on March 17th and April 8th, respectively.

Q. All of these documents are documents which have passed through the hands of the Bank (referring to Defendant's Exhibits 27 to 32)?

129 A. All appear to have passed through the hands of the Bank.

Q. Have you made out a pass book of the current account of Pedro Cantero?

A. Yes, sir.

Q. Is this the pass-book, marked Defendant's Exhibit 33?

Judge ODLIN: Objected to, it not being shown that any connection exists between them and the defendant, Francisco Martinez, or his guardian.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. Yes, sir.

Mr. GIBBS: That is all.

Redirect examination by Judge ODLIN:

Q. Who is in possession of the steamer "Germana" now?

A. In the hands of Mr. Armstrong of the firm of Armstrong & Mackey, Brokers, as administrators.

Q. Who put it in his possession?

A. I do not know.

Q. Who does Armstrong report to?

A. To the Bank.

Q. Any demand ever been made upon the Bank by Francisco Martinez for the redelivery of that steamer to your knowledge?

A. Not that I know of.

Q. Are you familiar with the circumstances under which Mr. Armstrong took possession of the steamer?

A. No, sir, I am not.

Q. Can you state about how long he has been reporting to the Bank the operations of that steamer?

A. Ever since I have been in the Bank is my recollection.

Judge ODLIN: That is all.

130 Mr. GIBBS: That is all

JOSEPH N. WOLFSON, a witness for the plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination by Mr. ODLIN:

Q. What is your name, address and occupation?

A. Joseph N. Wolfson, attorney at law, Manila, P. I.

Q. Are you acquainted with Francisco Martinez?

A. I am.

Q. How long have you known him?

A. By referring to the record marked 1590 of the docket of this

Court, entitled "Carmen Ortiz Caringal-vs-Francisco Martines" and refreshing my memory by examining the date of the filing of the suit in which I appear as counsel, I knew Francisco Martinez during the month of February, 1903, for the first time, personally.

Q. In this suit to which you refer, you were counsel for which party?

A. For the plaintiff.

Q. Who was defendant?

A. Francisco Martinez.

Q. Did you have a conversation with Francisco Martinez at that time?

A. I did, at his residence down on Calle Lavisares, I think.

Q. What was the subject of that conversation?

A. I went down to see him with reference to the collection of a note for 26,000 pesos given me for collection by my client and tried to collect the money and I had heard that he was a very rich man and was very much surprised at the locality in which he was living and the character of the house, and entered into conversation with him in reference to the matter and finally led up to the subject of this note and he said, "My friend, your note was lost  
131 in a gambling game of Monte and I refuse to pay it; it is a gambling debt". Well, after conversation with him for half an hour he finally offered to pay in compromise 1,000 pesos but he wanted to pay that in installments. I laughed at him and filed the suit. I had several conversations with him subsequent, the purport of which I cannot remember. At any rate he induced my client to take the papers out of my hands, paid me a nominal fee of \$370 and they settled the matter among themselves.

Q. Did you have any conversation with him recently?

A. Several.

Q. On what subject?

A. Well on matters—yes, I had a conversation with him—

Mr. GIBBS: Objected to as immaterial and not referring to any account or claim or note included within the demands in this case.

Judge ODLIN: One of the issues in this case as raised by the pleading touches the mental condition of Francisco Martinez; they say that he was easily influenced and incompetent; it is competent to show that he was competent and intelligent to do business with other people at that time and must be competent.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. The next matter that I had with him that I remember distinctly was, on or about the 8th of October, 1903, Geronimo Dias gave me a note for collection of \$4,000 signed by Francisco Martinez and I called on him for the amount in payment and he insisted that this also was a note which represented a gambling debt. I laughed  
132 at him and wanted to know whether all his obligations were gambling obligations and he said "No" but this one particularly and he mentioned the names of the parties with whom he played. I finally prevailed upon him to arrange a com-

promise of the matter, and he said "See my lawyers, Messrs. Early & White". I had several conversations with White & Early and received a letter from him and he said no, under the statement made by Francisco Martinez "we cannot even make a compromise". The interval between that date and the date that he called on me to take his appeal from the order of Judge Sweeney declaring him a prodigal; I cannot remember at this time what conversations I had or the purport, but I believe I had several and in all my relations with him I found——

Mr. GIBBS: Object to his voluntary opinions.

WITNESS: Well, he was smart enough to keep me from getting any money out of him.

Mr. GIBBS: I move to strike out the answer of the witness as not responsive and as being the opinion of the witness.

Q. During your conversation with Francisco Martinez in the year 1903, what was his manner and his conversation; describe the manner of his conversation and his appearance?

A. Perfectly rational and perfectly sane, in fact I could not with all my persuasive powers induce him to recognize any of these obligations or pay them or even compromise them.

Mr. GIBBS: Move to strike out the answer as stating a conclusion of the witness and not facts.

The COURT: Let the motion be overruled.

Mr. GIBBS: Exception.

133 Q. Have you ever had any conversation with Francisco Martinez with regard to his relations with the International Banking Corporation?

A. I did.

Q. When?

A. Shortly after, a few days or a day after Judge Sweeney rendered his opinion and appointing Mr. Cohn as guardian.

Q. Where did that conversation take place?

A. At my office.

Q. How did he happen to go to your office?

A. That I do not know, he came up there with, I think Isidro Martinez and he wanted me to take an appeal and represent him as his attorney and take appeal from the judgment rendered by Judge Sweeney declaring him a prodigal, and appointing Mr. Cohn guardian and tutor.

Q. What was his manner and attitude at that time?

A. Same as theretofore; I took him into the office and examined him with Judge Lyon in the presence of Judge Lyon, my partner, and explained to Judge Lyon the case and he conformed to my views that we were at liberty to take the case and I prepared papers to present them to the Court asking for a new trial or appeal to the Supreme Court.

Q. That appeal was afterwards taken by different counsel wasn't it?

A. It was.

Q. And who was Isidro Martinez who went to your office with Francisco Martinez; a relative of his?

A. He claimed to be a relative, but whether he is or not I do not know. I have known Isidro Martinez since the day I commenced practicing law in Manila, early in 1902.

134 Q. Is Isidro Martinez in the Court room now?

A. He is.

Q. Is he the gentleman sitting on the front seat there with the dark spectacles?

A. It is.

Q. At this time what was said, if anything, in regard to the business relations of Don Francisco Martinez and the International Banking Corporation?

A. I prepared my papers and was sitting in the court room waiting to catch Judge Sweeney at leisure in the morning to present the motion and a friend of mine, a prominent lawyer of this bar, incidentally asked me what I was doing and I told him and he said, "Wolfson, you are the attorney for the Casa Comision operating as attorney for them, are you not?" and I said I am and he said "You are also attorney for the International Bank aren't you?" and I said I am; and he said "Are you going to mix up with Francisco Martinez matters," or words to that effect, and I said why what has that to do with it and he said "Have you read the record in the prodigal proceedings?" and I said no, and I desisted then from presenting the appeal and went and got a copy of the record and read it and sent for Francisco Martinez and told him I could not represent him after reading that record and he insisted that I should and I told him my reasons why.

Q. During your conversation with Francisco Martinez at that time, was anything said regarding his relations with the International Banking Corporation?

A. Yes, sir.

Q. State to the Court the substance of that conversation?

\* A. I told Francisco Martinez that I could not represent him because probably there might be, judging from the testimony a conflict between him and the International Bank, and he said, "Mr. Wolfson, there is nothing between me and the International Bank as against me. I owe and want to pay" and he insisted that there could be no conflict between him and the International Bank.

Q. Did you have any further conversation with him on that subject?

Mr. GIBBS: Objected to as immaterial; it might be in rebuttal and is in anticipation of our defense.

Judge OBLIX: The evidence I offer now is based upon the same proposition that would exist in this case, if there were no guardian proceedings whatever. I am asking for it solely as admissions; the admissions of the defendant are evidence against him.

Mr. GIBBS: But the witness's testimony shows that these admissions were after the declaration of the defendant's incompetency and prodigality.



The COURT: From the date of the order of the Court declaring him incompetent renders him incompetent until there is a judgment of the Court declaring him otherwise.

Objection sustained.

Judge ODLIN: Exception.

Q. Did you ever have any conversation with Francisco Martinez previous to the appointment of Mr. Cohn as guardian in regard to his relations with the International Banking Corporation?

A. In my various interviews with Don Regidor at this place of business known as Casa Comision I met Francisco Martinez up there several times but I cannot state at this time any particular conversation I had with him in reference to any particular  
136 matter. I saw him several times at the International Bank, as well.

Q. Was that before the appointment of the guardian?

A. Yes, sir, but I cannot mention any particular. I know that I was consulted frequently by Mr. Regidor as well as Mr. Brown of the International Bank relating to various matters; for instance I had the collection of the rents of the Francisco Martinez property as far back as, according to my docket, some time in November, 1903, the exact date I cannot remember at this time.

Q. Are you sure you saw Francisco Martinez at that time?

A. Yes, sir and had several conversations with him in reference to the administration of these properties, what repairs were necessary, how the rents were to be collect; I remember distinctly with reference to the water supply; the house he lives in was one of the properties he turned over to the International Bank and I wanted him to pay his pro rata share of the water; that was some time during the year 1903, I can't remember, but we have had repeated conversations in reference to these matters.

Q. Did the fact that the Bank had an interest in that property become the subject of conversation at that time?

A. Yes, sir.

Q. What did he say about it in October or November, 1903; confine yourself to that period?

A. Unless I refer to my docket I would not pretend to fix the date; to my daily dairy.

Q. Please confine yourself if you can, to any conversations that took place previous to November 14, 1903; in other words, previous to the prodigal proceedings in this court?

A. I had several conversations with Francisco Martinez  
137 with reference to the Bank matters, pertaining solely to the administration of the properties which he had leased, the Bank turned over to me for attention.

Q. Did these conversations, all or any of them take place previous to the prodigal proceedings?

A. Certainly, because my relations with him were so friendly in regard to my management of these properties that he came to me for that reason to represent him in the prodigal proceedings after the judgment rendered by Judge Sweeney; in other words,



I knew the old man very well after this Carmen Ortiz suit which I had already testified about which was filed in February, 1903.

Q. Previous to November 14, 1903, did you have any conversation with him as to the nature and extent of this indebtedness with the International Bank?

A. No, sir.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. When were you first employed as counsel for the International Bank, Mr. Wolfson?

A. I think it was in May, 1903, possibly a little earlier.

Q. When were you first employed as attorney for the Casa Comision?

A. I do not claim to have been employed as regular attorney for the Casa Comision; special matters I attended to.

Q. When were you first engaged in special matters?

A. Well, it was shortly after I was retained by the Bank. The way I met Don Ricardo Regidor was, I met him at a big dinner given by Antonio Torres; he introduced us and he told me to come around the next morning.

138 Q. Where were you employed first, as attorney for the Bank or the Casa Comision?

A. I won't pretend to answer, unless I refer to my diary.

Q. To refresh your memory, isn't it a fact that you were first employed by Ricardo Regidor or the Casa Comision and then employed by the Bank or Mr. Brown by the intervention of Ricardo Regidor?

A. No, sir, I do not think so.

Q. Were you not taken to the Bank by Mr. Regidor and Mr. Cantero and introduced to Mr. Brown and talked to him about being made attorney?

A. No, sir.

Q. And at that time wasn't the matter of Francisco Martinez mentioned to you as being one of the matters which you would have something to do with?

A. Absolutely not. Mr. Brown has been a client of Judge Lyon, interested with him in binding interests since the day that I entered partnership with him and I was told by Mr. Brown that he and Judge Lyon for a long time previous had been good friends and after he opened the International Bank we were employed as attorneys for the Guaranty Trust Company and we filed the papers for the Guaranty Trust Company and shortly after that Mr. Brown employed me as his attorney and the first matter he gave me is a matter of record in my docket.

Q. In the year 1903 how often did you visit the International Bank?

A. I cannot say now.

Q. How often did you see Martinez in the International Bank?

139 A. I cannot say that I ever saw him there, I do not remember that I ever saw him there.

Q. How often did you see Ricardo Regidor there?

A. Never in my life.

Q. How often did you visit the office of the Casa Comision?

A. Frequently.

Q. How frequently?

A. I do not pretend to say now, any more than you can say how many times you visited my office in 1905.

Q. Can you say whether it was once or twice a week, or several times a week; whether you visited it often or seldom?

A. I generally have clients call on me, unless it is so important that I have to go to them.

Q. You made the statement that you were at the Casa Comision various times and saw Martinez there several times and I want to know the number of times during the year 1903 you saw Martinez there?

A. Once or twice or three times, I will not pretend to state from memory how often, because I cannot do it. It is practically impossible.

Q. Which of the two gave you this property for administration, Ricardo Regidor or Mr. Brown for the Bank?

A. Brown through Robles Lahesa; he had charge of it first and he turned it over to me.

Q. Robles Lahesa was another of the attorneys for the Casa Comision was he not?

A. Not that I know of.

Q. One of the incorporators wasn't he?

140 A. Not that I know of; never heard it before; he was attorney for the International Bank and he had the administration of the properties and he turned it over to me.

Q. It was about the month of November that you first began the administration of this property?

A. I cannot remember.

Q. You had nothing to do with the administration of the property until Mr. Cohn's appointment as guardian?

A. Yes, sir, long before.

Q. How long before?

A. I could give you the exact date by referring to my diary.

Q. But not the exact date, just an approximate date?

A. When I was first employed?

Q. When you first commenced to administer the property of Martinez.

A. No doubt my docket will show, I will not pretend to say now; three or five months before; I cannot remember and I am not going to testify to anything that is not the truth and that I cannot fix definitely.

Q. Did you administer the property at 135-139 and 79-83 Calle Barcelona?

A. Yes, sir.

Q. And the property at 24 Calle Penarubia?

A. Yes, sir.

Q. 98-100 Calle Principe?

A. Yes, sir.

Q. 141-145 Calle Sevilla?

A. I think so, I am not positive about that.

Q. 68-76 Calle Lavizares?

A. Yes, sir.

Q. And the Calle Arranque property?

A. For the International Bank, yes, sir.

141 Q. And the property at 137 Calle Jaboneros?

A. The Calle Arranque property and the Calle Limery property were properties first administered for the Casa Comision to whom I rendered reports and then after that pacto deretro expired, I took it over for the International Bank; it had nothing to do with Francisco Martinez.

Q. The Calle Arranque property and the Calle Limery property was property that formerly belonged to the Martinez estate wasn't it?

A. I do not think so, I think it belonged to the Casa Comision.

Q. The Casa Comision got it by one of these various transfers from Martinez, didn't they?

A. I do not know that. Judge Odlin has charge of all the escrituras of the property.

Judge ODLIN: In the plaintiff's pleadings there is nothing upon the subject of property on Calle Arranque and Calle Limery.

The COURT: I thought we determined about that this morning.

Mr. GALE: But I made an erroneous statement to the Court this morning; our answer embraces all the properties and all vessels administered by the Bank. We do seek an accounting and the proceeds and income of the property and also seek a cancellation of the transfers.

Judge ODLIN: I object to any testimony upon any real estate in Calle Limery and Calle Arranque.

The COURT: Objection sustained.

Mr. GALE: Exception.

Q. You have also administered the steamer "Germana"?

A. No, sir.

Q. Have you ever had anything to do with that?

A. Yes, sir, I went down at the request of Mr. Brown and  
142 enforced compliance with an escritura that he had with Francisco Martinez and took possession of her and turned her over to the International Bank.

Q. When did you do that?

A. I cannot remember the date.

Q. This year or last year?

A. Last year, the early part of 1905; it may have been the latter part of 1904; I can give the date by referring to the record.

Q. That also was done after the declaration of prodigality and incompetency and after the injunction of this Court restraining all persons from interfering with the property of the defendant?

A. I cannot remember now, I have not the date.

Q. It was done then?

A. I have never willfully and intentionally violated a Court's order and I certainly would not in this case.

Q. Is there any record of the time when you took it over?

A. In the custom-house, yes, sir.

Q. You have no record of your own, have you?

A. There might be a daily diary entry, I would be able to look it up.

Q. Your recollection is it was the latter part of 1904 or early part of 1905?

A. I cannot say, I do not remember the many, many transactions I have had for the International Bank since my first employment; it would be a physical impossibility for me to remember dates.

Q. But how long with reference to the time you took over the administration of certain of the real property?

A. It was after I had charge, I think, of the real property.

Q. How long after?

A. I would not attempt to remember.

Q. Some months?

A. I much prefer to refresh my memory and then you can get the exact date because I will not give a definite date when I do not remember, especially in the Philippine Islands.

Q. You mentioned a note of 26,000 pesos in favor of Dona Carmen Ortiz; where did you get that note?

A. She brought it to my office.

Q. Who is Dona Carmen Ortiz?

A. I do not know now. I never saw her but twice in my life once when she brought the note and another when I went to her and told her that the answer filed in this case, if proven as true, would, not only defeat her claim, but would result in having her arrested and I said, as your attorney I am bound to tell you exactly the facts and she then paid my fee and asked me to dismiss the suit.

Q. Did you ever have any conversation with anybody other than Mr. Martinez about this note of 26,000 pesos?

A. Yes, sir, this confectionery, the man that runs this confectionery up in Quiapo; he was interested in some.

Q. Who was that?

A. I do not remember the name now.

Q. Interest in what way?

A. He brought me my fee.

Q. He is a Spaniard is he?

A. I think so, yes, sir.

Q. Did you ever have any conversation with anybody else about it?

A. Possibly so, I do not remember now.

Q. Did you receive any offers of settlement from anybody, apart from the one testified to as having been received from Francisco Martinez?

A. None that I can remember.

Q. I will refresh your recollection a little; do you remember having a conversation with Ricardo Regidor and Mr. Cantero and Mr.

Gallegos or if not with them, were they present when you had a conversation with Ricardo Regidor regarding that note?

A. This 26,000 note?

Q. Yes.

A. Never in my life.

Q. In which he offered some 3,000 pesos and which you refused stating that you would not take that?

A. Well, I certainly would not have refused 3,000 pesos; we had a contingent fee of 25 or 50 per cent and collected only 350 pesos for my fee; I am not insane.

Q. Why would you have accepted 3,000 pesos?

A. Because it would have paid me a much larger fee that I received.

Q. But you considered Mr. Martinez a very rich man you said?

A. I think he claimed that this was a gambling debt and filed an answer to that effect and I knew I could not recover.

Q. But before the answer was filed and before you filed the complaint these offers had been made to you, had they not?

A. Oh, no. Francisco Martinez offered me 1,000 pesos  
145 only and he wanted me to accept that in partial payments.

Q. So that you are positive are you that you had no conversation or talk with Ricardo Regidor in any way?

A. About that?

Q. About the 26,000 pesos loan?

A. No, sir, I had none that I can remember and especially do I deny that I was offered any 3,000 pesos by Ricardo Regidor; now that you are talking about this I will refresh your memory; when Geronimo Diaz brought this note of 4,000 pesos to me for collection against Francisco Martinez, he told me that I could sell it to the Casa Comision for, I won't say now, 1% of its face value. I did go up to Ricardo Regidor and asked him would he buy this note, because I had a good contingent fee in it and he told me that he would not, that it was a gambling obligation and I returned it after I failed to effect a settlement with Mr. White and Mr. Early and took my client's receipt and told him I could not hold it.

Q. Are you acquainted with the handwriting of Ricardo Regidor?

A. May be so, I do not know, I would not say; I do not believe I saw him write half a dozen times.

Q. Would you say that is in the handwriting of Ricardo Regidor (presenting paper to witness.)?

A. I cannot say.

Q. Assuming that is in the handwriting of Ricardo Regidor and was written by him, and which contains the statement that the promissory note of 26,000 pesos which is in the possession of the lawyer, Wolfson, and for which I offered 3,000 pesos in cash and 3,000 pesos in hemp and which he refused to accept, you would say that he was mistaken in writing that?

A. Not only mistaken, he lied, for the simple fact that I  
146 had a contingent fee dependent upon success and had the hardest kind of work to collect 350 pesos for our services which included costs and therefore, I say that I never heard of it

before. I did hear that after I returned the note and dismissed the suit, that she had compromised the matter with Francisco Martinez; for what amount, I never heard I think now.

Q. With the intervention of Regidor?

A. I never heard of it.

Q. How many other notes did you have?

A. That is all.

Q. The Diaz and the Carmen Ortiz notes are all you had?

A. That is all I can remember.

Q. Have you brought with you an account of the incomes collected from the property of Martinez?

A. No, I did not.

Q. You have such accounts have you to show the gross amount received from this property?

A. My books are *keep* regularly, but it would be quite difficult for me to make up a statement; it can be done.

Q. Does somebody keep track of what the amount of income or rents received from this property —?

A. Minute details.

Q. Who keeps it?

A. I do, of every dollar and every cent expended.

MR. GALE: We call upon the witness to produce an account in accordance with the subpoena already served. That is all now.

Redirect examination by Judge ODLIN:

Q. With regard to the reality, and I am speaking now of the reality outside of the Limery property and the Arranque property, please state to the Court for whom you acted in collecting the rents?

A. Entirely in favor of the International Bank.

Q. During the year 1905, didn't you collect some rents for Mr. Cohn, guardian of Francisco Martinez?

A. I did.

Q. How did that happen?

MR. GALE: Objected to as immaterial.

Judge ODLIN: I want to show that the statement in our complaint is true; we must prove our complaint; we allege that we have a lien upon certain tracts of real estate and allege that we are in possession of a portion and the guardian is in possession of the balance.

MR. GALE: There is no dispute about that; we only ask for judgment for the gross amount of rents and income of the property that has been administered by the Bank.

THE COURT: Objection overruled.

MR. GALE: Exception.

Q. How did it happen that you, representing the International Bank collected rents for Mr. Cohn, who was the predecessor of Mr. Cestre?

A. My administration of the property which was turned over to me by the Bank, and I may say Francisco Martinez, was so satisfactory to the Bank, and while collecting the rents which I do per-

sonally on the 5th of each and every month, I go around to the various tenants and the balance of the rents which I do not collect at that time, my incargado does. Mr. Cohn and I had a conversation in reference to his administration of the property and number of tenants who were so far delinquent in their rents.

Q. About when did that conversation with Mr. Cohn take place?

148 Mr. GALE: Objected to as incompetent and immaterial.

Judge ODLIN: I want to show that he collected rents for a certain portion of the property for the Bank and of a certain portion for the guardian, Mr. Cohn.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. The property in the hands of Mr. Cohn was turned over to me for administration under a certain written agreement.

Q. About when?

A. I think six months prior to the appointment of Mr. Ilustre.

Q. Some time in the year 1905?

A. Yes, sir, and I collected the rents regularly and made returns to Mr. Cohn of the collections of rents, less my fee of 10% for collection and sent him check.

Q. When the guardian was changed, did you still remain connected with the collection of rents for that property?

A. Yes, sir, but a while ago Mr. Ilustre informed me that the tenants were complaining to Francisco Martinez that I was a little harsh in the collection of rents, therefore I turned the property over to him, as he preferred.

Q. Then Mr. Ilustre has charge of that portion which the Bank is not in possession of?

A. Yes, sir.

Q. And — regards the balance, are you still collecting?

A. I am and have had possession of that property since it was turned over to me by Francisco Martinez and the Bank up to now.

Judge ODLIN: That is all.

Cross-examination by Mr. GIBBS:

Q. When did Francisco Martinez turn this property over to you?

A. At the time I went down and interviewed all the tenants.

149 Q. When was it?

A. I can give you, I believe, the exact date for the reason that I served notice on all the tenants; I presume I have a copy of that notice.

Q. Were those notices sent by Francisco Martinez to the tenants?

A. No, sir, by me.

Q. How did Francisco Martinez turn the possession of the property over to you?

A. By permitting me to go ahead and collect the rents and in

conversation with him. The first is when I went down to make the collections.

Q. He came to you first and told you to collect the rents for the Bank?

A. No, sir.

Q. How was that?

A. I went down to take possession of these properties and collect these rents.

Q. For whom?

A. The International Bank.

Q. At whose order?

A. The International Bank.

Q. Represented by whom?

A. Mr. Brown. When I went up to 66 Calle Lavizares I found myself in the house of old Francisco Martinez and I demanded rents from him and he said, laughing, "You are not going to try to collect rents from me" and we then arranged about the collection of the rents. I went so far as to collect that month as to collect a number of the rents for Pedro Martinez's property and I had to disgorge later.

Q. There is one other thing I want you to explain; if Mr. Francisco Martinez turned over the property to you formally as you say, how does it happen he did not turn it all over to you formally?

A. I have never been able to explain that and I had repeatedly asked Mr. Brown why he did not turn over to me all the properties instead of this particular portion.

Q. And you had specific directions from Mr. Brown to take specific property only?

A. He gave me a list and I took charge of those properties and I found out that I was taking charge of Pedro Martinez's property and ran against him and his attorney and had to back out.

Q. When you collected rents on property in the possession of the Bank, you turned that money over to the Bank; you never turned any of it over to the guardian did you?

A. Only the properties I collected for.

Q. I am referring to the property that was in your possession as agent of the Bank; did you turn any of that money over to the guardian?

A. Surely not.

Q. When you acted as agent of Mr. Cohn of property in the possession of the Guardian did you turn that over to the Bank?

A. Certainly not.

Q. Kept that separate?

A. Yes, sir.

Q. Were entirely separate transactions?

A. Certainly.

Q. Made at entirely different dates?

A. Yes, sir.

Q. Mr. Cohn did not engage you as agent until some year and a half after the Bank engaged you as agent?



151 A. That is right.

Q. And there was no connection in any way between your employment as agent for the Bank and agent for Mr. Cohn, any more than the fact that you had administered the property and demonstrated your ability to collect rents from tenants?

A. No, sir, I would not under any circumstances with the practice I have and my financial conditions undertake the collection of rents as a business for 10% and administer properties. I collected the rents for Mr. Cohn as administrator of Francisco Martinez, in the interest of the International Bank, otherwise I would have had nothing to do with it. I wanted to administer the property economically and get as large a revenue as I possibly could from these properties as a whole. I will say in this connection, because I do not want to go down as a rent collector, that in the general employment by the International Bank as one of their counsel, I agreed to take charge of the administration of these properties.

Q. Go back to your other testimony; you say Mr. Francisco Martinez came to your office together with Isidro Martinez?

A. I think so, Mr. Gale.

Q. Any one else accompany him?

A. No, sir.

Judge ODLIN: Objected to as your Honor has ruled that conversations between Mr. Francisco Martinez and Mr. Wolfson after the appointment of a guardian, are improper.

Mr. GALE: Then I move to strike out all of it; the evidence would be admissible on our part for the purpose of proving a conspiracy.

The COURT: The question I ruled on was a question going  
152 to the defendant's capacity. I do not understand this question to call for conversations he had with Martinez. Objection overruled.

Judge ODLIN: Exception.

Q. Who carried on the conversation in relation to the matter at that time with you?

A. I did with the old man, Martinez.

Q. Isn't it a fact that Isidro Martinez conducted the whole matter with you, entirely?

A. No, sir, not Isidro Martinez, knowing him as I do and have known him since 1902 and desiring to be specific in this matter, I remember definitely of telling Isidro Martinez and he will tell you the same thing, you shut up and I will talk to Mr. Francisco Martinez myself.

Q. In what language did you talk to him?

A. In Spanish and I profess to say that I can carry on a conversation in Spanish and be understood and make myself understood, without saying that I am a Spanish scholar or understanding much Spanish.

Q. Did you have the conversation with Mr. Martinez?

A. At this particular conversation I do not think I did, because Judge Lyon was very much more proficient in Spanish than myself and he questioned Mr. Martinez as much as I did.

Q. Then it was Judge Lyon and the old man who carried on the conversation?

A. And myself; we were all in Judge Lyon's private office; that is when he came to employ me and after reading the record and after my conversation with this prominent attorney I told Francisco Martinez and I told Judge Lyon, I said it was very fortunate not getting into this thing and when Francisco Martinez came up I explained the whole thing to him why I could not and would not take his case. I want to say in this connection that Captain Palmer in conversation with me in my office referred to—

Mr. GALE: Objected to as irresponsible to the question. That is all.

Judge ODLIN: That is all.

J. B. EARLY, a witness for the plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. J. B. Early, attorney at law, live in the City of Manila.

Q. Where were you residing in the month of May, 1903?

A. Manila.

Q. Were you engaged in the practice of law then?

A. Yes, sir.

Q. Did you have a partner?

A. Yes, sir.

Q. What was the firm name?

A. Early & White.

Q. I will show you a check which has been referred to in this case, being check for the sum of 1650 pesos Mex., signed by Francisco Martinez and dated May 21, 1903, payable to bearer, No. 24043, and ask you if you know the last endorsement in ink?

A. Yes, sir, that is Mr. White's handwriting, Early & White by E. H. White.

Q. White, your partner?

A. Yes, sir.

Q. I will show you another check No. 17852-S dated August 5, 1903, amounting to 2500 pesos, signed by Francisco Martinez and ask you if you know who endorsed that check?

A. That is Mr. White's handwriting.

Q. Did your firm have anything to do with a Filipino by the name of Francisco Martinez in the year 1903?

A. Yes, we were the attorneys for Francisco Martinez.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. Did you have anything to do personally with the cashing of either one of these checks?

A. No, sir.

Q. Did you receive any report from Mr. White in relation to the cashing of these checks?

A. That last check, no, sir; the first one was cashed, I think while I was in China. That is to say, that last check he reported it some time after.

Q. And how did this check of No. 24043 come into the possession of the firm?

A. I declare I do not know. I was away at the time, I was in China when it was attended to, so I do not know personally about it.

Q. Do you recall any difficulty arising about the cashing of this 1650 peso check?

A. No, sir, I do not, I had nothing to do with the collecting of it; it was collected I think while I was away.

Q. When was your firm first employed as counsel for Francisco Martinez?

A. I think it was in February, 1903.

Q. And how long did you continue to act?

A. We continued to act up to the time the guardian was appointed.

155 Q. What was the nature of the employment; were you employed generally as attorney in general matters at a regular retainer?

A. Yes, sir; well, at first, no; from February up to May, about May 15th there was no contract; after that we had a contract.

Q. What were the circumstances of your employment or the employment of your firm by Mr. Martinez?

A. Well, he came to our office and employed us first I think in one or two cases, I think the first case he employed us in was a gambling case in I think, the Ortiz case; I am not certain.

Q. How many such cases did you have for him during the time you worked for him?

A. Well, there were quite a large number of them.

Q. Approximately how many?

A. I think we had suits in the courts here for 70,000 or 75,000 pesos, somewhere between 60,000 and 75,000 pesos.

Q. In May of 1903, when the permanent arrangements were made were there any peculiar circumstances or conditions surrounding that matter?

A. No, sir, I do not think that there were; he had so much business on hand there was no definite arrangements made between us and we entered into a written contract with him.

Q. Do you recall about the month of May, 1903, of there being an inquiry into the matter of gambling transactions which affected Francisco Martinez by the Prosecuting Attorney's office in the City of Manila?

A. Yes, sir, there was some inquiry made about gambling debts.

156 Q. And do you recall at that time the discussion between the Prosecuting Attorney and yourself and Martinez and

your partner, Mr. White, in relation to the matter of the appointment of a guardian at that time?

A. No, the first conversation I think was had when we were trying to get up testimony to defeat the gambling debts and I remember I called on the Prosecuting Attorney or spoke to you or Mr. Smith, I do not know which, in regard to getting evidence of those who played in order to succeed in our defense.

Q. That was about the month of March, wasn't it?

A. No, sir, I think that was later on. I did my best on the inside of the gambling debts so that we could get the witnesses to prove that they were really gambling debts as at that time we had several cases.

Q. Did Francisco Martinez consult with you in regard to the opening of a credit or the securing the loan from the International Bank about the time of your first employment?

A. No, sir.

Q. Did he consult with you regarding the giving of various pagares and of escrituras of sale with the right of repurchase and contracts affecting his property and boats to the International Bank?

A. Not at first, no, sir, later on after our employment, he spoke to us about having put up his property with the International Bank for quite a large credit—but just what he said—I think he said it was real estate.

Q. Do you remember about when that was, about how long after your first employment?

A. I really do not remember.

157 Q. Can you fix that time somewhere; when was it with reference to the proceedings of prodigality in court?

A. Well, it was some time before.

Q. Can you state how long before, one month, or two or three?

A. Well, it must have been three or four months before that I guess.

Q. Did he secure your advice or intervention on the matter of the execution of the document to the International Bank?

A. No, sir.

Q. Did he consult with you in any way about the signing of these documents before he signed them?

A. No, I think that was all arranged before he came to us.

Mr. GALE: That is all.

Redirect examination by Judge ODLIN:

Q. How frequently did you see Francisco Martinez between February, 1903, when your firm first were employed and the end of the year or latter part of the year 1903?

A. He was in our office nearly every day.

Q. What was his attitude and behavior; how did he discuss matters; explain to the Court the manner in which he discussed his business matters with you?

A. He discussed them as any business man would, in rather an intelligent way; he seemed to be rather shrewd in some respects about his business.

Q. Can you give the Court more particulars of that conversation with him which you had with regard to his relations with the International Banking Corporation?

A. No, sir, I cannot; my recollection of the matter was  
158 just in a general way that he had mortgaged his property to the Bank for a certain credit. I do not remember now how much the credit was; it seems to me, though, that he first at one time got a certain amount and later on an additional credit; it seems to me that is the case.

Q. You cannot recollect any specific amount mentioned by him?

A. No, sir I cannot.

Judge ODLIN: The plaintiff now offers in evidence a notarial document dated February 24, 1904, signed by A. A. Matthews, before any notary public, and also by R. W. Brown on behalf of the Bank and recorded in the Custom-house at Manila, with respect to the possession of the steamer "Germana", as Plaintiff's Exhibit "D".

Mr. GALE: What is the object?

Judge ODLIN: To show the Bank has been in possession of the property since 1903.

Mr. GIBBS: We desire to note that while we make no objection to the introduction of the document, we do not thereby admit the validity of it, it appearing that it was executed after the decree of prodigality and that the possession of the steamer was taken after the decree of prodigality without the permission of the Court; but we admit it to show that they violated the order of the Court and continued administering and disposing of the property as before the appointment of the guardian.

Judge ODLIN: Plaintiff also offers in evidence notarial instrument dated August 8, 1904, executed by Geronimo Jose surrendering the steamer "Germana" to the Bank, together with an agreement by George Armstrong and Mr. Marshall, the present manager of the Corporation, accepting the delivery from Jose and constituting Armstrong the depositary; said instrument being re-  
159 corded in the Custom-house August 29, 1904, as Plaintiff's Exhibit "E".

Plaintiff also offers in evidence, instrument executed before a notary on June 2, 1903, by the Corporation known as "El Varadero" of Manila, acknowledging full payment and satisfaction of a debt which had been previously due said corporation by Francisco Martinez, as Plaintiff's Exhibit "F"; showing that the debt of \$13,000 gold was paid by the receipt of 30,000 pesos Mex.; and the property described in this instrument being identical with a portion of the property described in the complaint filed in this court in case No. 3365.

The COURT: There being no objection, let them be admitted and marked.

VICENTE ILUSTRE, a witness for the plaintiff, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. Vicente Ilustre, attorney at law; No. 90 Escolta, Manila.

Q. Are you the same Senor Ilustre who is the present guardian of Francisco Martinez?

A. Yes, sir.

Q. And one of the defendants in these cases now on trial?

A. Yes, sir, as guardian.

Q. Do you remember when you were appointed guardian as successor to Mr. C. C. Cohn?

A. Yes, sir, 6th of January of this year.

Q. Do you remember being in my office not long after that?

A. Yes, sir.

160 Q. And you came to my office for what purpose?

A. The trial of one of these cases was set for a day in January and upon the occasion when I saw you I asked you whether these cases could not be set for another day, inasmuch as Mr. Martinez was disposed to pay the amount of money he really owed to the International Bank. You then answered me that you would talk with the officers of the Bank. I received, I believe on the 18th of January a letter from you wherein you stated that the Bank was disposed to a settlement under certain conditions set forth in that letter.

Mr. GIBBS: Object to the introduction of any evidence relative to proposed compromise as incompetent and immaterial.

Judge ODLIN: I think the objection is well taken, I will ask another question.

Q. I am asking you as to the circumstances under which you came to my office; I am asking you if you can recall what took place after you arrived there?

A. Mr. Odlin showed me checks he had with him drawn on the International Bank.

Q. Who signed those checks I showed you?

A. Most of them were signed by Francisco Martinez, some were not signed by him.

Q. Were those checks I showed you, shown to you at your request?

A. Yes, sir.

Q. Was any other person present during the time that you examined those checks in my office?

A. At the beginning there was not, but afterwards Mr. Francisco Martinez came in.

161 Q. At whose suggestion did he enter my office?

A. My suggestion.

Q. After Senor Martinez entered my office at your request, please state what took place?

Mr. GALE: Objected to as immaterial for the reason it took place

after the declaration of prodigality and that has already been held inadmissible; there is no foundation laid for its admission.

Judge ODLIN: We propose to show, if your Honor will allow us, that Francisco Martinez after he was declared a prodigal in this case, made certain admissions in this suit in the presence of his guardian.

The COURT: Objection sustained.

Judge ODLIN: Exception.

Mr. GALE: No cross-examination.

Judge ODLIN: Plaintiff offers in evidence the original loan book of the International Banking Corporation referred to in the testimony of the witness W. H. Taylor, as to the alleged transactions between the International Banking Corporation and Francisco Martinez.

Mr. GALE: We object to the introduction of this loan book in evidence for the reason it is not stamped in accordance with the provisions of the Code of Commerce, and for the further reason that it is immaterial, both the suits which are being jointly tried, are based upon these so-called written obligations of Francisco Martinez and the loan book offered is irrelevant to that issue.

The COURT: I will reserve my ruling on the question.

It is agreed between the plaintiff and defendants in this case that an extract may be substituted for the original Loan Book, the  
162 abstract identified by the witness Taylor.

Adjourned until 8 A. M.

### Proceedings Held March 7, 1906.

Same appearances.

Witness TAYLOR, recalled by the plaintiff:

Direct examination by Judge ODLIN:

Q. You have testified in general as to the receipts and disbursements of the Bank in connection with the real estate which is in possession of the Bank and which is described in the complaint filed in this case. I will ask you to please state to the Court the amount of gross income upon the pieces of real estate situated in the streets called "Barcelona", "Penarubia", "Principe", "Sevilla" and "Lavizares"?

A. Gross amount is 18,409.41 pesos Conant.

Q. Now I will ask you to state the amount of disbursements by the Bank on that same real estate?

A. 4,361.05 pesos.

Q. Is that all?

A. On the separate properties, but on the property as a whole 6,951.05; 11,312.10 pesos is the total.

Q. Find out what is the entire amount on the property on Calle Jaboneros?

A. Net, is 7,097.31.



Q. State the gross amount of receipts of the property situated in Calle Jaboneros?

A. Gross, 7,720 pesos.

Q. And the amount of disbursements regarding that same property?

A. 1,792.51.

Q. And the net amount of receipts is what?

A. 5,927.49 pesos (5,927.49).

163 Q. Then the total amount net from all the reality would be 13,024.80 pesos, is that correct?

A. That is right.

Q. Regarding the steamer "Germana", please state the amount in disbursements?

A. The amount disbursed is 10,048 pesos.

Q. And the amount received?

A. 3,152.52.

Q. What is the result?

A. Overdraft on the books of the Bank amounting to 6,895.59 pesos.

Q. In other words the Bank has paid out nearly 7,000 pesos more on account of the "Germana" than it has received?

A. Yes, sir.

Q. Including all the real estate in this case of which the Bank is in possession, and the steamer "Germana", what is the net result to the Bank?

A. About 6,129.21 pesos.

Q. And the defendant is entitled to a credit of that amount?

A. Yes, sir.

Q. Up to what date are these calculations made?

A. December 31, 1905.

Q. Close of business of last year?

A. Yes, sir.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. There has been no credit in the general account of Francisco Martinez for any of these incomes?

A. No, the money is held to special account in place of crediting it to any account.

164 Q. What period does this cover?

A. I do not remember just when they started the account; they started it before I came to the Bank which was in February so it must have been December, 1903, or January, 1904; ever since Wolfson has been collecting rents; I think it was December, 1903.

Q. I notice that you have charged to the Calle Barcelona property the sum of 2,422.89; what was that charge for?

A. That is a charge of disbursements and includes insurance taxes and necessary repairs to the house.

Q. And those have been made by the Bank?

A. Most of the disbursements are made by Mr. Wolfson but in regard to the taxes and things coming through Judge Williams, the



insurance, taxes and things like that and the bill is rendered direct to the Bank, so Wolfson does not make all the disbursements; all petty things he makes.

Q. And in regard to the other real properties and charges against that are for the same expenses and repairs?

A. Yes, sir, the same; I would like to explain; take the general expenses that are paid, where it is impossible to fix the exact proportion to each property; for instance during the typhoon, many of the houses were partially destroyed and the contractor fixed them up and rendered an account for them all and that was put in General Account and in that account is also put the amount of Wolfson's fees and a man at 40 pesos to look after the tenants in moving out and things of that sort.

Q. How much fees are paid for the administration of the property?

A. 10%.

165 Q. That is included in the amount disbursed?

A. Yes, sir.

Q. In regard to the steamer "Germana" you have charged to her the sum of 10,048.11 pesos, what was that for?

A. To comply with the customs regulations; they would not let her run unless these repairs were made; for instance, the steamer "Balien" would cost more to repair than we could hope to get out of her and she is laid up for over a year.

Q. Was the "Germana" laid up when you took possession of her?

A. I cannot say as to that.

Q. Under what sort of an arrangement is she being run now, the "Germana"?

A. That is in the hands of Mr. Armstrong; Mr. Armstrong I think at the first of the year succeeded in leasing her to a Chino who is now running her at so much per month.

Q. Do you know what that monthly income is?

A. No, I do not.

Q. And who made these repairs on her that you made?

A. What firm?

Q. Yes?

A. I do not know, Mr. Armstrong attended to that and sent in the bills.

Q. When were those repairs made?

A. When we took her over most of them were made.

Q. Do you know when it was?

A. No, sir.

Q. Can you give the approximate time?

A. I think in 1904, but I could not tell you the exact date.

166 Q. Now, do you know what the amount of the gross income has been from the real properties and steamer "Germana" since December 31, 1905 down to the present date?

A. No, sir, I do not.

Q. Can you give the approximate sum?

A. No, because I have never got Mr. Wolfson's account; for one months, take December for instance, he collects the rent on the

5th of December and he renders a statement on the 10th, but that statement is for the rents of the month before; he starts collecting on the 5th and collects all that month and on March 10th, about, he will render me a statement of the rents collected in February, so for February, I have the rents collected in January, and as a rule they average about 600 pesos I should judge, net.

Q. Does that include the boat?

A. No, sir, that has nothing to do with the boat; Mr. Armstrong has that, he has full charge of the boat; the Bank has nothing at all to do with it, except we pass the overdraft checks on the account.

Q. I will hand you a bundle of 50 checks appearing to be signed by Pedro Cantero and marked Defendant's Exhibit 34 for identification and ask you to state what those checks are, if you know?

A. I left instructions last night that these checks should be sorted out and sent up her- and I have not examined them yet.

Q. Are they the checks that pertain to the current account of Pedro Cantero with the International Bank, to which you have referred in your testimony?

A. To the best of my knowledge; I left instructions to have these checks sent up this morning.

Mr. GALE: That is all.

167 ARTHUR F. ODLIN, a witness for the plaintiff, being duly sworn by the Court in English, testified as follows:

Direct examination:

My name is Arthur F. Odlin, I am an attorney at law, and live in the City of Manila. Shortly after the appointment of Senor Ilustre as guardian of Francisco Martinez in place of Mr. C. C. Cohn, resigned, I received a message from the former, asking if he could see me at my office, or elsewhere, at some convenient time, to discuss matters of various suits pending between the International Banking Corporation, represented by me, and Francisco Martinez, represented by him. I replied in the affirmative and one afternoon, the exact date I can't recall, Senor Ilustre came to my office. He asked me if I was willing to show to him the obligations of Francisco Martinez which we expected to use in court and I told him that he was at perfect liberty to see anything I had in my possession. He asked particularly if I had all the checks which the said Martinez had signed and which had been paid by the Bank. I then went to the safe, found the checks and delivered them to him; he examined the same in my presence and with my consent made a list of them with pencil and paper and then asked me if I would be willing that Francisco Martinez, himself, should see the checks and I told him that I had no objection, whatever, provided said examination was made in my presence. He said that Francisco Martinez was in the building and that he would like to bring him into my office and so that the examination might be made by the two defendants together. I told him I had no objection whatever.

168 Whereupon he left the office and returned with the other defendant, Francisco Martinez. All the checks which have been

mentioned in this case as having been signed by Francisco Martinez, were then passed across the table to these two gentlemen; each check was examined by them together in my presence. A Conversation took place between Francisco Martinez and Senor Ilustre in Tagalog which I could not understand. Senor Ilustre talked with me in Spanish; after this conversation with Francisco Martinez in Tagalog, Mr. Ilustre stated to me——

Mr. GALE: We object to any conversations had with Mr. Ilustre or the defendant, Francisco Martinez; as to any admissions Mr. Ilustre might have made were made, as the evidence shows, in his capacity as guardian and cannot bind the defendant and are outside the scope of his authority as to Francisco Martinez, because those admissions—he having been declared by the judgment of this Court of November 19, 1903, to be mentally incompetent and incapable of managing himself or his estate—or any admissions which he might make would not be binding upon him and not competent in evidence. And for the further reason, that the evidence in this case shows that the conversation to which the witness is testifying was held in negotiating compromise between the plaintiff and defendant in this case and any offers that may have been made by either party in that case are inadmissible by the special provisions of the Code of Civil Procedure, as well as by the general rules of law.

The COURT: I will permit the witness to make his statement and afterwards rule on the competency; confine yourself, Mr. 169 Odlin, to that interview.

Mr. GALE: Exception.

A. Mr. Ilustre stated to me that after going over these checks there were four or five of them that his client was unable to recall and Senor Ilustre asked me if I would explain to him, either then or at some later time, the nature of these items. I remember distinctly that one of the items had reference to the check signed by Pedro Cantero and that another of the items referred to the check of 30,000 pesos; the other three items I do not recall, but they were all quite small matters. I told Mr. Ilustre that I was perfectly willing to give him at any time any information in my possession regarding these transactions and I stated to him definitely that it was not my instructions and not my desire to attempt to collect from Francisco Martinez any obligation that he did not owe. I remember distinctly that we discussed then and there the matter of the Pedro Cantero check for 5,000 pesos and that Mr. Ilustre told me that his objection to acknowledging that check as an obligation of Francisco Martinez was, that the power of attorney which had been given to Pedro Cantero by Francisco Martinez had been obtained by threats and intimidation and that the old man had been frightened by Pedro Cantero into executing that document. I told him that that was a matter the Court would have to pass upon, that I had no knowledge of those facts. We then began to discuss the matter of the 30,000 peso check, but our conversation was very short, either he was interrupted or I was interrupted and our interview closed about that

time. With regard to the three other items which were quite small, I was unable to explain them, but the aggregate amount was not over 2,000 or 3,000 pesos and I told him I would try to get the particulars of those items and see him later. We had a subsequent interview, but nothing definite or of importance occurred. The balance of our conversation concerned a possible compromise and is not proper testimony. I remember distinctly stating to Mr. Ilustre that it was my belief that this check for 30,000 pesos represented the original loan upon the steamer "Germana" it being for the same amount, but that I would ascertain definitely from the Bank and let him know and he stated to me that the debt upon the "Germana" had never been paid and it did not make much difference to his client or the Bank whether they paid the original loan or took up pagares, they should not be obliged to pay both, with which expression of opinion I conformed.

Judge ODLIN: That is all.

Mr. GALE: No cross-examination. I now insist upon my objection and wish to ask the further objection as to Francisco Martinez that there is no admission on his part in any way, shape or form, even if it were competent testimony, binding against him.

The COURT: If this man, Martinez, was in a condition mentally that demanded the appointment of a guardian for him on account of his incapacity to transact his business and the Court passed upon the proof, the judgment of the Court is evidence of that and the presumption is that he remains in that incapacity until there is a judgment of the Court holding that he has recovered from that incapacity and restoring to him his property and the right to transact his own business. That being true, his association with his guardian and his

statement to his guardian cannot be of any greater weight than his own individual statement to counsel or to the plaintiff Bank with reference to these transaction.

I differ with counsel for the plaintiff with reference to the right of the guardian or attorney to make admissions that will bind his ward or his client. I do not think it would be admissible to prove what an attorney for a man might say with reference to the matter. Let the objection and motion be sustained.

Judge ODLIN: Exception.

The plaintiff rests.

Mr. GALE: The defendants now, at the conclusion of the plaintiff's testimony, ask the Court to return a verdict for the defendants and enter judgment accordingly, for the reason that the evidence does not establish the plaintiff's right to relief demanded in the complaint. And for the further reason, that plaintiff has established no cause of action against the defendant, under the complaint.

The COURT: Let the motion be overruled.

Mr. GALE: Exception. I also want to reserve the right of concluding the cross-examination of the witness Cantero, who is ill.

The COURT: Certainly.

Mr. GALE: The defendants now offer in evidence the record of this court in civil case No. 2230, in the matter of the appointment of a guardian for Francisco Martinez, a person of unsound mind.

Judge ODLIN: Objected to as encumbering the record. I am willing to have the petition go in and the judgment, but not all these documents and affidavits.

Mr. GALE: We will offer the record and designate the judgment and order of the Court of November 14, 1903, appearing in English on pages 38 to 42, inclusive, and appearing in Spanish on pages 43-47 inclusive, of the record; also the order of this Court, of date, December 31, 1903, appearing on pages 73 and 74 of the same record.

Judge ODLIN: We have no objection to the judgment and order of November 14, 1903, but do not see the necessity of it going in when it is all admitted. We object to the order of December 31, 1903, because it is irrelevant, it being admitted in the pleadings that the appointment of the guardian was made and the validity of such appointment is recognized by the plaintiff and the guardian, himself, made a defendant by reason of such recognition and the statement of the Court as to the reason why an appeal was denied, which denial of appeal has been in no way questioned by the plaintiff in this case, is not relevant to any issue involved and seeks to introduce in this case a record in another case in which the International Banking Corporation was not a party, and the validity or propriety of which has never been questioned by the plaintiff in this case.

173 The COURT: The order appointing the guardian I think is competent, but the last order offered I do not think it competent.

Mr. GALE: We will prove that the appeal of prodigality proceedings was at the instigation of the Bank by its manager, Mr. Brown, as a part of the conspiracy to defraud this old man.

The COURT: I hold that the last order, so much as shows that Mr. Chicote was not the attorney representing the defendant, Martinez, in that case, applied to the Court as his attorney afterwards for an appeal and that the appeal was refused is not competent, but the balance of the order is.

Judge ODLIN: Exception, to the admittance of any evidence as to the appeal.

Mr. GALE: The two orders I ask to have marked Defendant's Exhibits 35 and 36.

The COURT: Let them be so marked.

ISIDRO MARTINEZ, a witness for the defendants, being duly sworn by the Court in English, testified as follows:

Direct examination by Mr. GALE:

Q. What is your name, residence and occupation?

A. Isidro Martinez, Calle San Jose No. 149, broker; 34 years of age.

Q. How long have you lived in Manila?

A. About sixteen years.

Q. Are you acquainted with the defendant in this case, Francisco Martinez?

A. Yes, sir.

174 Q. How long have you known him?

A. Since 1902.

Q. Are you acquainted with Robert W. Brown, formerly manager of the International Bank?

A. Yes, sir.

Q. How long did you know him?

A. Since December, 1902.

Q. Were you acquainted with Ricardo Regidor, who was connected with the Casa Comision?

A. Yes, sir.

Q. How long have you known Ricardo Regidor?

A. Since February, 1903.

Q. I will ask you to state whether or not about the month of January, 1903, you intervened in any transaction between Francisco Martinez and R. W. Brown?

A. Yes, sir, I cannot exactly tell the date, but from the 14th to 15th of January Mr. Martinez asked me to go and see Mr. Brown to open a credit of 30,000 pesos and I went and saw Mr. Brown and spoke to him and he said "You come day after tomorrow." So I went "the day after tomorrow" and he told me to come back the next morning and the next morning I met Mr. Mariano Montilivano, who was a Chinaman, then the manager of the house, Palanca, and I asked him to go with me to speak to Mr. Brown about this credit and Mr. Brown asked me to call for Mr. Martinez to bring five or six titles or documents of the buildings of his property; after a few days we brought those documents and handed them over to Mr. Brown and I think Mr. Brown sent an inspector to inspect the buildings and after inspecting the buildings on the

20th the Bank opened Mr. Martinez's account current for 175 30,000 pesos.

Q. Do you know whether or not Francisco Martinez signed any instrument of any kind or nature for the opening of that credit?

A. No, sir, I do not know whether he signed anything.

Q. Subsequent to the opening of this credit in the Bank in which you intervened and were instrumental, did you receive any checks from Francisco Martinez?

A. Yes, sir.

Q. Do you recall the first check that you received?

A. In January, I think the first check.

Q. And was it at or about the same date the credit was opened?

A. Yes, sir, nearly the same date.

Q. What was the amount of the first check that you remember?

A. I think it was 4,000 pesos.

Q. And upon what Bank was that check drawn?

A. International Bank.

Q. What did you do with that check after you received it from Francisco Martinez?

A. Cashed it in the Bank.

Q. How did you cash it?

A. That was only taking the check there to the Bank and they gave me the money.

Q. Did you present it personally to the Bank?

A. Personally.

Q. I will ask you to examine check No. 24002 dated the 20th of January, 1903, for 4,000 pesos, apparently being signed by Francisco Martinez and state if that is the check?

A. Yes, sir, that is the same check.

176 Q. Do you know how this endorsement of Wiget & Nebolhardt in pencil came to be on the back of that check, Mr. Martinez?

A. I do not know.

Q. Did you personally present that check to the Bank?

A. Yes, sir, I presented this and it did not have anything on it.

Q. Did you receive the full amount of cash from the Bank for the check?

A. Yes, sir, the full amount.

Q. And what was the next check that you received, if you remember, of Mr. Martinez?

A. I received so many checks that I do not remember so-e; some for 3,000 pesos, some 1,000 pesos, 2,000 pesos, 2,500 pesos, some of 500 pesos.

Q. I hand you check dated January 30, 1903, numbered 24,011 apparently signed by Francisco Martinez being for 1,000 pesos and ask you to state if that is one of the checks you received?

A. Yes, sir, that is one I received.

Q. What did you do with this check after it was given to you?

A. I went to the Bank with the intention of cashing that.

Q. What occurred there?

A. They refused to pay the check.

Q. Who refused?

A. The Bank and then I went to see Mr. Brown and asked him why he paid the first check and refused to pay this one and he told me, the documents were not arranged yet with Mr. Martinez, so I went to see Regidor.

Q. Why did you go to see Regidor?

A. Because Brown told me Regidor was taking charge of all these documents.

Q. What occurred when you went to see Regidor?

177 A. I went to him and asked him if the document is not ready and he said, "What is the matter" and I said I have a check here which the Bank refuses to pay and he said, "Do you want to cash this to-day" and I said yes, and he said "As it is a gambling debt, you must reduce it 25%" and I said all right, and Regidor went with me to the Bank and after cashing it, took 1,000 pesos and I took 250 pesos and handed it to Mr. Regidor and Brown was sitting there and I went home.



Q. When you went back to the Bank with Mr. Regidor, where did you go, in the outside office part of the Bank or into the private room?

A. With Regidor.

Q. Where did he go?

A. To Mr. Brown's desk.

Q. And who had the check at that time, you or Mr. Regidor?

A. Mr. Regidor got this check and put it in his pocket.

Q. And what was done between Mr. Regidor and Mr. Brown, if anything, concerning the check?

A. He was talking with Mr. Brown and I do not know what they talked about and he said, "Mr. Martinez, you can go and get the money."

Q. Did you take the check and get the money?

Q. No, not the check, I went and got the money and brought back 250 pesos.

Q. Where was Regidor when you paid him the 250 pesos?

A. Together with Mr. Brown talking there.

Q. Did you see the check at the time Mr. Brown and Mr. Regidor were talking together?

A. Mr. Regidor presented it to Mr. Brown, the check, then  
178 he asked me to sign the endorsement on the check and I signed it.

Q. I will hand you another check, No. 24016, dated Manila, 3rd of February, 1903, for 3,000 pesos, apparently signed by Francisco Martinez, drawn on the International Banking Corporation and ask you to state if that is one of the checks you referred to as having been given to you by Francisco Martinez?

A. Yes, sir.

Q. What did you do with that check after receiving it?

A. I went to Mr. Regidor, because I know the Bank would not cash it then.

Q. What occurred when you took it to Mr. Regidor?

A. The same transaction, 25%.

Q. Did you take that check also to the Bank with Mr. Regidor?

A. Yes, sir, because I did not trust him, I always go with him.

Q. And what occurred when you got to the Bank on that occasion when you *cash you* cashed the 3,000 peso check?

A. I did not go in to where Mr. Brown was, because there is a counter and I went to the counter there to tell Mr. Regidor, "Don Ricardo, aqui esta el dinero." Then I went home.

Q. Where is this counter where you say you left the money?

A. Where there is the opening to go into the office of Mr. Brown.

Q. Where was Mr. Brown at that time?

A. Talking to Mr. Regidor.

Q. How much did you say you left there for Regidor?

A. 25% ; 750 pesos.

Q. I will now ask you to examine another check No. 24026  
179 dated February 21, 1903, for 500 pesos, drawn on the International Banking Corporation, apparently signed by Francisco Martinez and ask you to state if that is one of the checks you referred to?



Judge ODLIN: Why do you use the word "apparently" when it has been understood here during the trial that there was no question as to the signature of Francisco Martinez. I do not know of any plea here of forgery. I object to counsel's forming questions which indicate the crime of forgery when he has not plead it.

The COURT: Do you make any question about Martinez's signing the checks?

Mr. GALE: No, sir.

The COURT (to witness): Did Mr. Martinez sign those checks?

A. Yes, sir.

Mr. GALE:

Q. What did you do with that check after it was given to you by Francisco Martinez?

A. I went to see Regidor and he paid me 400 pesos and I left the check there in his office.

Q. Is that your name endorsed on the back of that check?

A. No, sir.

Q. Do you know whose it is?

A. "Javier". I think, or something like that.

Q. Do you know who that person is?

A. No, sir, I do not know him.

Q. Was that name on there when you delivered it to Regidor?

A. No, sir.

Adjourned until 2:30 P. M.

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Proceedings at 2:30 p. m.

Same appearances.

Witness ISIDRO MARTINEZ on the stand:

Mr. GALE, continuing:

Q. I will now hand you check No. 24043 dated Manila, May 21, 1903, for 1630 pesos, drawn on the International Banking Corporation and appearing to be signed by Francisco Martinez, and ask you to state whether or not that is one of the checks to which you referred?

A. Yes, sir. I received this check from Mr. Martinez.

Q. What did you do with that check after you received it?

A. I went to Mr. Regidor and tried to make the same transaction but he wanted to reduce from that 40%.

Q. Then what did you do with it after that?

A. I replied to him that in that case I am going to give this back to Mr. Martinez: when I stepped out of the door I changed my mind; as I owed Mr. White, a lawyer, 400 pesos I gave him the check to go and cash it.

Q. Did he succeed in collecting it?

A. Yes, sir, he had to make a row at the Bank and then he collected it; with Mr. Brown, according to what he said.

The COURT: What Mr. White said about it is not competent.

Q. Now, apart from the five checks which have been handed you and which you have identified, Mr. Martinez, do you recall any other checks you received on the International Bank during the year 1903?

A. There is another check of 2500 pesos.

Q. I will ask you to look at check no 24035 and state whether or not that is the check to which you referred?

A. No, sir.

Q. I call your attention to check No. 17852-S bearing the date August 5, 1903, and ask you to state if that is the  
181 the check to which you refer?

A. No, sir, the check is also endorsed by Mr. White in the Bank; you will find his signature there.

Q. Take these checks I hand you; being checks introduced by Mr. Taylor, and look them over and see whether any of those checks were given to you?

A. I cannot find it.

Q. The check for 2500 pesos you mention was given you, what did you do with that check after it was given to you by Mr. Martinez?

A. Handed to Mr. White and paid him 20% to make the collection on that check.

Q. Do you know to whom that check was made payable; that is in the body of the check, payable to any person?

A. To bearer.

Q. Do you remember about the date of that check?

A. I do not remember the date, I think it is between June and July.

Q. Was that the last check you received?

A. Yes, sir, the last one.

Q. I again call your attention to the check No. 17852-S and ask you to examine that closely as to the endorsement and the name written on the body of the check and the handwriting and ask you to state whether or not that may be the check to which you refer?

A. I think this is the check.

Q. The endorsement of Early & White on the back of the check, the handwriting of the name of "Early" "White" on the back, is the same isn't it?

A. Same, yes, I think it is written by Mr. White, I do not know who wrote the check.

Q. Do you recall the prodigality proceedings in this court  
182 in the latter part of the year, 1903, in relation to Francisco Martinez's prodigality?

A. Yes, sir.

Q. Do you know whether or not you intervened in the matter of the employment of Mr. Wolfson for the purpose of prosecuting an appeal from the order of the Court declaring Francisco Martinez a prodigal?

A. Yes, sir, Mr. Regidor sent for me and asked me to tell the

old man, Martinez, to appeal the case and asked me to take him over to Mr. Wolfson's office.

Q. I will also ask you to state whether or not you intervened in the matter of the employment of Alfredo Chicote to prosecute that appeal?

A. Mr. Wolfson refused to do that and I went to Mr. Regidor and Regidor told me to go over to Chicote.

Q. Did you then take the old man to Mr. Chicote's office?

A. Yes, sir.

Q. Now during that year 1903 from say January, 1903 down to January, 1904, how frequently did you see old man Martinez?

A. Always with him.

Q. Did you at any time during that period accompany him to the office of the Casa Comision or Ricardo Regidor?

A. Yes, sir.

Q. How often?

A. Very frequently.

Q. During that time, Mr. Martinez, how did the old man, Martinez act in relation to the transactions in regard to his property and his credits, etc.?

A. He acted according to what Regidor told him to act because he is afraid of Regidor and any time Regidor asked him to sign any document, he made him sign without reading the contents of the document.

183 Q. Did the old man, Martinez, know of this discount that was exacted by Regidor on these checks of yours?

Judge ODLIN: Objected to as incompetent.

The COURT: Objection sustained.

Q. Did you have any conversation with the old man, Martinez, about the discount exacted upon these checks and the refusal of Brown to pay the checks without the revision of Regidor?

Judge ODLIN: Objected to as the declarations of Martinez have been excluded when asked for by the plaintiff and it would be unfair to admit them when the defendant, himself asks about them.

Mr. GALE: It goes to show his capacity previous to the decree of prodigality.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. Yes, sir, I spoke to him about it.

Q. State what you said to him about it and what he replied?

A. I said, Martinez, your checks are worth no more than 75% and he asked me "Why" and I said, the Bank will not pay without reducing 25%. Then Mr. Martinez told me, "I will pay you the difference of what the Bank deducts from you".

Q. Did he pay you that difference?

A. Yes, sir.

Q. During the year 1903, did you know of any other checks being given by the old man, Martinez, to any other person than yourself; take the first one that you knew of after the opening of

the credit; checks the defendant, Martinez, drew on the bank to other persons than yourself?

A. Yes, sir, the majority of the people who received checks had them discounted; between the gamblers they told each other.

Q. Look over this bunch of Martinez's checks identified by Mr. Taylor and I will ask you to state if you can select any of those checks in which you had personal knowledge of the transactions?

A. I do not think I can do it.

Q. Examine the endorsements and see if you can connect any one of those checks with any transaction of which you have personal knowledge?

A. This 5,000 pesos were paid to Mr. Luna (referring to check No. 24029).

Judge ODLIN: I object to the answer and move to strike it out.

Mr. GALE: If it is not connected up with the personal knowledge of the transaction, it can go out.

The COURT: What the witness thinks about it is not proper.

Q. Who is Mr. Luna to whom you have referred?

A. Lives in Calle San Pedro.

Q. Who was he and what was his occupation?

A. Gambler; no other occupation.

Q. Why do you say you think this check refers to that?

Judge ODLIN: Objected to as to what he thinks.

The COURT: Objection sustained.

Q. State what you know of the transaction in connection with this Luna whom you mentioned?

A. The old man lost that 5,000 pesos.

Q. How?

A. In burro and the next day I saw the check of 5,000 pesos in his hands.

Q. You saw the check in whose hands?

A. Mr. Luna's.

185 Q. Do you personally know what Luna did with that check of 5,000 pesos?

A. No, sir.

Q. Where was it you saw Mr. Luna have this check for 5,000 pesos?

A. In his hands.

Q. Where was it this 5,000 pesos was lost by the old man?

A. In his house.

A. In Luna's house?

A. Yes, sir, in Calle San Pedro.

Q. Do you know of any transactions which occurred in 1903 by which any notes or pagares of the old man, Martinez, were purchased by Regidor or any other person connected with him?

A. Yes, sir, by Mr. Regidor.

Q. What transactions have you knowledge of?

A. A pagare of 5,000 pesos.

Q. That is due to you?

- A. Yes, sir, due to me, signed by Mr. Martinez.
- Q. When did that transaction take place, what part of the year?
- A. December.
- Q. What did you do with that pagare of 5,000 pesos?
- A. Regidor paid me 3500 pesos for it.
- Q. Do you know what Regidor did with that pagare or what became of it?
- A. I do not know what he did with the pagare.
- Q. How were you paid for it?
- A. Sometimes 500 pesos, sometimes 1,000 pesos and so on until I got 3,000 pesos.
- 186 Q. In cash or check?
- A. Check signed by Mr. Azaola.
- Q. Vicente G. Azaola?
- A. Yes, sir.
- Q. Were those checks drawn on his account, that is the account of Azaola or of the Casa Comision?
- A. I think the Casa Comision.
- Q. On what Bank were those checks drawn?
- A. The International Bank.
- Q. Did you personally cash those checks?
- A. Yes, sir.
- Q. Did you receive the full amount of those checks when you presented them to the Bank?
- A. Yes, sir, the full amount; some of the checks I endorsed to the store "Isle de Cuba" because I owed something and paid with the check.
- Q. You have identified and testified to checks being given to you aggregating the amount of 12,650 pesos in the year 1903 and also as to a note given you by Francisco Martinez amounting to 5,000 pesos; for what reason and on what account were those checks and that note given you?
- A. Part of the checks to pay my commission and part in gambling.
- Q. What part was to pay your commission?
- A. The 3,000 pesos.
- Q. Your commission on what?
- A. On the credit he offered me 3,000 pesos.
- Q. For which credit?
- A. For the 30,000 pesos.
- Q. The credit you assisted him in opening in the Bank?
- A. Yes, sir.
- 187 Q. Did the old man pay any other commission besides yours in that transaction?
- A. Yes, sir, to Mariano Montelivan.
- Q. How much did he pay him?
- A. 600 pesos.
- Q. And the balance of the checks and the note was for gambling?
- A. Yes, sir.
- Q. Where and how was this gambling carried on in which this old man lost that amount?

A. Well, we played legally.

Q. Where did you play?

A. Sometimes in my house, sometimes in the house of Tomas del Rosario, the Governor of Bataan now.

Q. Who were the persons who played at the house of Rosario when that playing was carried on there?

A. Mr. Tomas del Rosario, myself and Luna, Manuel Rameriz and Dr. Papa and no more, and the old man Mr. Martinez.

Q. And who played at your house?

A. At my house, Mr. Ramirez, myself, Tomas del Rosario and the old man, and my brother-in-law and a Portuguese by the name of Silva.

Q. What was your brother-in-law's name?

A. Francisco Sarandin.

Q. Where is the Portuguese now, that Silva?

A. With the Compania Maritima.

Q. When did the old man first commence to play in these games?

A. I think, 1902.

Q. And when did he cease playing?

188 A. In August, 1903, I think.

Q. Did the old man win or lose in these series of games?

A. He must be lucky to win because he played in with any card, like in poker they say "bluffed it."

Q. Do you know whether in the whole series of games he lost or won?

A. He lost the majority, but sometimes he won 5,000 or 10,000 pesos.

Q. What would you say were his losses during the time he was playing there?

A. At my house?

Q. At your house, or Rosario's house, all these games?

A. I think the old man might have lost 80,000 or 90,000 pesos.

Q. How did he pay his losses?

A. Pagare.

Q. Any other way?

A. No, sir, pagare.

Q. To whom did he give these pagares?

A. To the people he owed.

Q. These same people you have named?

A. Yes, sir.

Q. What did the holders of these pagares do with the notes how did they dispose of them?

A. Some of them go and make transaction with Martinez, selling him the whole pagare for 10%; a pagare of 3,000 pesos for 300 pesos.

Q. What became of the others?

A. The others brought suit against him and reduced at 5%.

Q. Were any of these notes sold by these persons that you know of?

189 A. Yes, sir, some were sold to Regidor.

Q. Do you know about the notes given to del Rosario by the old man?

A. Tomas del Rosario of 12,000 pesos?

Q. Yes?

A. Mr. Regidor bought that for 3,000 pesos.

Q. Do you know what Regidor did with the notes after he bought them?

A. No, sir.

By Judge ODLIN:

Q. Do you mean that there were two notes of 12,000 each or two notes aggregating 12,000?

A. No, only one of 12,000 pesos given to del Rosario.

By Mr. GALE:

Q. What was your purpose in opening this credit at the International Bank for the old man for 30,000 pesos?

Judge ODLIN: Objected to as the witness is not a party to this suit: it is immaterial.

Mr. GIBBS: We will show that the credit was opened for the purpose of paying these gambling obligations.

Judge ODLIN: Objected to as it would be irrelevant.

The COURT: Objection sustained.

Mr. GIBBS: Exception.

Q. Were these obligations, these pagares to which you have referred in your previous answer, given by the old man for loans in these games, given before or after the opening of the 30,000 pesos credit which you have testified to?

A. Before the opening of the credit.

Q. Is there any relation between the opening of this credit  
190 and these pagares?

Judge ODLIN: Objected to as it is practically the same question already excluded.

The COURT: Objection sustained.

Mr. GALE: Exception.

Q. Why was this credit opened for the old man at the Bank?

A. Because he wanted money to pay his pagares at 10 or 20 or 30% and pagares of bigger amounts he only pays 3 or 4%.

Q. Referring to the check No. 24043 for 1650 pesos, state whether or not that check was endorsed with the name of Francisco Martinez at the top at the time it was given to you?

A. No, sir.

Q. Do you know when it was put on there?

A. I do not know; I only saw the signature when I got the check.

Q. Do you know a man by the name of Mascunada?

A. Yes, sir.

Q. Who is he?

A. He is the Manila-Dagupan Railroad Station master.

Q. Do you know anything of a note of Francisco Martinez held by him?

A. No, sir.

Q. Do you know whether or not he had any connection with the transactions or obligations?

A. No, I have never seen him with Martinez.

Q. Do you know a man by the name of Benito Robles?

A. Yes, sir.

Q. Who is he?

A. The lawyer, Robles Labesa.

Q. I say Benito Robles?

A. No, sir, I do not know him.

191 Mr. GALE: That is all for the present; I may want to recall him later.

Cross-examination by Judge ODLIN:

Q. I understand you to say that you told Francisco Martinez that you were unable to collect his checks from the Bank in full because the Bank insisted upon the discount, is that correct?

A. Yes, sir.

Q. Now, isn't it a fact it was Ricardo Regidor that insisted upon the discount you testified to?

A. Ricardo Regidor, he and Mr. Brown, both of them deducted the 25%; the Bank would not pay without Regidor going there.

Q. You got 75% of the money and Regidor got the other 25% is that right?

A. 25% to Regidor and the Director, probably, they were talking there; I left the money on the desk.

Q. Did you see the cashier or teller pay out that money the man who handled the money?

A. Yes, sir.

Q. How much money did he pass over the counter?

A. The amount the check was, 3000 pesos if it is 3000.

Q. And you kept 75%?

A. Yes, sir.

Q. And Regidor got the 25%?

A. Yes, sir.

Q. Right in the Bank, Regidor got the 25%?

A. Mr. Brown was there also; they talked about the check first.

Q. Who got it?

A. Between both of them.

192 Q. Into whose hands was the money paid?

A. I put it on the table.

Q. You do not know who took it from the table?

A. I do not, because I went out.

Q. Are you any relation to Francisco Martinez?

A. No, sir.

Q. Do I understand you to say that the old man lost in 1903 at gambling somewhere in the vicinity of 80,000 or 90,000 pesos?

A. Between the year 1902 and 1903.

Q. Did he not ever win?

A. Yes, sir, sometimes.

Q. About how much money did he win?

A. 5,000 or 6,000 or 10,000, I can't say.



Q. But he lost more than he won, you are sure of that?

A. Sometimes he lost 10,000 or 15,000; I could not say the exact amount; sometimes 1,000 pesos.

Q. State to the Court as near as you can, the amount of the old man's losses over and above his winnings?

A. I cannot, exactly. In my place?

Q. That you know about personally?

A. As I have told you, about 80,000 or 90,000 pesos.

Q. Then he lost 80,000 or 90,000 pesos over and above what he won; is that what you mean to say?

A. I do not understand you.

Q. Same question put in Spanish to witness?

A. Over and above his winnings.

Q. Now, he always paid his losses by pagares?

A. Yes, sir.

193 Q. And the people who received these pagares were different people were they?

A. Yes, sir, different people.

Q. And some of these people settled with him as low as 5%, is that right?

A. Yes, sir.

Q. About how much of this money was settled at 5% according to your knowledge?

A. I cannot tell you, but a friend of mine had a pagare of 40,000 pesos and made the transaction for 2%, transferred to Mr. Martinez for 2%.

Q. Do you know of any other losses he settled at 2%, except that one?

A. No, some at 5%, but I can't exactly tell you who he is now.

Q. About how much of that money was settled at the rate of 10%?

A. At the rate of 10%, pagares of 2,000 and 1,000 pesos.

Q. Did you ever see me before this trial?

A. No, sir.

Q. Do you know where my office is?

A. Yes, sir.

Q. Didn't you ever see me in my office?

A. I do not think so.

Q. Didn't you come to my office one afternoon in the month of February last, to talk about this case?

A. I do not think so.

Q. Will you swear that you did not come into my office and introduce yourself to me?

A. Probably I met you in the street, but not in the office.

194 Q. Will you swear to the Court that you did not enter my office at No. 6 Plaza Moraga in the City of Manila one afternoon in the month of February and ask me if you could talk about this very case?

A. I swear to that.

Judge OBLIN: That is all.

Redirect examination by Mr. GALE:

Q. This 40,000 peso note you referred to, was that one of the losses that took place in your place?

A. No, sir, in Santa Ana.

Q. Or in del Rosario's office?

A. Lanuza won that.

Q. When you say he lost about 80,000 pesos of your own knowledge, do you mean games in which you participated personally?

A. That is what we win between Tomas Del Rosario, Papa and myself.

Q. And games you people participated in personally?

A. Yes, sir.

Q. And do you know approximately what his whole losses were by gambling outside of those in which you took part?

A. Somebody told me—

Judge ODLIN: Objected to as hearsay.

The COURT: Objection sustained.

Q. How many notes—I mean did this note of 40,000 pesos sell at 2% of its value?

A. Yes, sir.

Q. How many other notes did you see which were given by Francisco Martinez for gambling debts which were not given for games in which you took part?

A. Several, 3,000 or 4,000 pesos.

Q. In whose favor was this 40,000 peso pagare given?

195 A. Mr. Lanuza.

Q. Give the names of all the persons that you can recall who held pagares of Francisco Martinez and what the amounts of them were?

A. Mr. Alba had a pagare of Francisco Martinez of 32,000 pesos.

Q. Do you know what he did with that pagare?

A. No, sir.

Q. Any other pagares?

A. Poblete.

Q. How much was his?

A. I can't exactly tell you the amount.

Q. Any others?

A. Mr. Escalante.

Q. How much was his?

A. 5,000 pesos.

Q. Do you know whether he collected it or not?

A. Not yet.

Q. Any others?

A. I do not recall any more.

Q. Give the names of the persons to whom the promissory notes were given and the amounts of them as a result of the games in which you took part?

A. Mr. Ramirez had a pagare from Mr. Martinez for 6,000 pesos.

Q. Do you know whether that was collected or not?

A. I think he made a transaction with Mr. Regidor.

Q. Any others?

A. I cannot definitely remember.

Q. Did you take part in the collection of the pagares given in these games in which you took part?

196 A. No, sir, I did not collect any pagare for other people; I collected my own.

Q. How many pagares did you hold given by Francisco Martinez to you?

A. One of 5,000 pesos and one of 4,000 pesos, another of 10,000 pesos and another of 3,000.

Q. What were those given for, those pagares?

A. Given for 8,000 pesos.

Q. For what purpose were those pagares given, to pay what?

A. For gambling.

Q. For money you won personally of him?

A. Personally.

Q. And how did he pay those?

A. When he opened the credit with the Bank.

Q. By the checks you have already stated?

A. Yes, sir.

Q. Do you know how many of these other pagares were collected of your own knowledge of the other parties?

A. No, sir.

Q. From the time this account was opened in favor of Martinez January 20th up to the time that you were required to go to see Regidor in order to collect your check, do you know approximately how many checks or how much money the old man Martinez took out?

A. During the month of January?

Q. Yes?

A. I think he had drawn about 10,000 pesos.

Q. Do you know for what those checks of which you have knowledge were given for?

A. I do not know.

197 Q. Do you know of any legitimate obligations which the old man had to which he applied the payment of 15,000 or 16,000 pesos between January 20th and the 1st of February; do you know of any obligations which he owed along about that time outside of gambling debts?

A. No, sir, he don't owe anybody.

Mr. GALE: That is all.

Cross-examination by Judge ODLIN:

Q. That pagare for 40,000 pesos which you mentioned, will you tell me who held it?

A. Mr. Lanuza.

Q. How much did he sell it for?

A. 2%.

Judge ODLIN: That is all.

Redirect examination by Mr. GALE:

Q. Do you know Dona Carmen Ortiz?

A. Yes, sir.

Q. Do you know whether she had any connection with any gambling operations or debts of Francisco Martinez?

A. Yes, sir, Mr. Wolfson has that debt, he was her lawyer. I understand that for the 30,000 pesos and odd and there was paid by the old man, 3,000 pesos.

Q. Do you know whether the old man paid Papa any sum in checks or not?

A. Yes, sir, check of 4000 pesos.

Q. Do you know what that 4,000 pesos was for?

A. Gambling debt.

Q. Do you know one, Jose Hilarion San Jose?

A. Yes, sir.

198 Q. Do you know whether he had any connection with any gambling obligations of Martinez?

A. Yes, sir.

Q. What was it?

A. I cannot tell you how much he wins from Martinez.

Q. Do you know whether he received any checks in payment of the obligation?

A. I do not know anything about that because they gambled in Mr. Zamora's house.

Q. Do you know whether he paid Senor Poblete any sum on account of gambling operations?

A. Francisco Martinez.

Q. Yes?

A. I think he paid some money according to what he said.

Judge ODLIN: I move to strike out the answer.

The COURT: Strike it out.

Q. Do you know anything of your own personal knowledge about any connection of attorney Santiago with any gambling operations?

A. I do not know anybody by the name of Santiago.

Q. Have you any personal knowledge of any deal with reference to jewelry in connection with gambling obligations?

Judge ODLIN: Objected to as immaterial.

The COURT: Objection sustained.

Mr. GALE: That is all.

MANUEL RAMIREZ, a witness for the defendant, being duly sworn by the Court through the official interpreter, Villareal in Spanish, testified as follows:

Direct examination by Mr. GALE:

Q. What is your name, residence and occupation?

A. Manuel Ramirez, farmer, live in Mindoro formerly  
199 but now in Manila; 54 years of age.

Q. Do you know the defendant, Francisco Martinez?

A. Yes, sir.

By Mr. GIBBS:

Q. How long have you known him?

A. For thirty years.

Q. Did you know Don Ricardo Regidor in his lifetime?

A. Yes, sir.

Q. How long had you know- him previous to his death?

A. I knew him for a long time before, but laterly I knew him in 1903, after he returned from Spain. I do not remember how many years.

Q. When did you first meet him to renew your acquaintance with him in the year 1903?

A. The latter part of March, 1903, I came to Manila.

Q. What was the occasion of your renewal of your acquaintance with Ricardo Regidor at that time?

A. Mr. Francisco Martinez invited me to go with him to Mr. Ricardo Regidor's house.

Q. What took place on the occasion of your visit with Francisco Martinez to the place of Regidor?

A. When I took my leave Mr. Regidor told me to return there because he wanted to talk with me about a very important matter.

Q. At that time what occupation did you have?

A. I was sub-inspector of constabulary.

Q. With reference to his invitation, state whether or not you returned to visit Ricardo Regidor?

A. On the next evening I went to see him.

Q. What took place when you went there the following night?

A. There I met the director of the Bank, Mr. Brown, and  
200 Mr. Regidor introduced me to Mr. Brown as an old friend of his.

Q. At about what hour of the evening or night was that when you met Mr. Regidor?

A. Between 8 and 9 I left my house at 8 o'clock.

Q. What, if anything, took place or passed between you and Mr. Regidor and Mr. Brown at that time?

A. Mr. Regidor spoke to me about buying pagares which Francisco Martinez lost in gambling, also promising to give me a commission of 5%.

Q. State all the conversation that took place between you three at that time?

A. That was all the conversation had between us and from that

time I began looking for pagares and in April found a pagare of 24,000 pesos.

Q. In whose favor was that promissory note?

A. In favor of Felix Herrera which was already due, of date 1903.

Q. What did you do with that promissory note, if anything?

A. I took the pagare to Mr. Regidor and Mr. Regidor told the owner that the pagare was no longer of value because it was overdue and besides it had been won in gambling.

Q. Give the history of that pagare?

A. Regidor promised to pay him only 1,000 pesos for it.

Q. Did Mr. Regidor purchase it and if so, how much did he pay?

A. He purchased the note for 1,000 pesos.

Q. Do you know in what form he paid for the pagare?

A. He paid it over in his house; he paid the note in his house in silver and then told me to take this old man to his house to renew the promissory note.

Q. What did you do in pursuance of those instructions?

A. I went over and told Mr. Francisco Martinez to go to Mr. 201 Regidor and he did go with me to Mr. Regidor and Mr. Regidor told him to renew each note, two pagares, one of 16,000 pesos and one for 8,000 pesos in favor of the former owner of the pagare by the name of Ramon Mascunada.

Q. I call your attention to Defendant's Exhibits 25 and 26 and ask you to state whether or not these are the promissory notes to which you refer which were given in renewal of the promissory note of 24,000 pesos?

A. Yes, sir, they are the same, that is my handwriting.

Q. The two promissory notes, one for 16,000 pesos and the other for 8,000 pesos are in your own handwriting?

A. Yes, sir.

Q. What did you do with those promissory notes after securing them from Francisco Martinez?

A. These promissory notes were signed in the presence of Regidor.

Q. Who took them after they were signed, if any one?

A. They remained in the hands of Regidor.

Q. What compensation, if any, did you receive for securing those two pagares?

A. 5% of the 24,000 pesos, which was 1200 pesos he gave me a check for; 200 pesos signed by Pedro Cantero and one of 1,000 pesos which I have not been able to collect as yet.

Q. Do you remember about what the date of that payment to you of the 200 pesos by check of Cantero was?

A. Must be subsequent to the date of the pagares (defendant's exhibits 25 and 26) on the same date.

Q. How many checks in all did you receive signed by Cantero if you remember in the year 1903; more than one?

A. I had on account of this promissory note one check of 200 pesos.

202 Q. Calling your attention to check dated June 2, 1903, for 200 pesos, bearing the endorsement of Manuel Ramirez,

No. 10154-S, state whether or not that is the check to which you refer, or whether it is a check given for some other purpose?

A. That is my signature on the back of it.

Q. Is that a check given for the purpose you mentioned?

A. Yes, sir, on account of the 1200 pesos.

Q. State whether or not you purchased any other notes of Francisco Martinez under your arrangement with Regidor?

A. I did not buy from other persons, but I had some in my own favor.

Q. State whether or not you took part in any gambling games with Francisco Martinez?

A. On various occasions.

Q. About when and where were those games played?

A. After the date of my arrival here which was the latter part of March we began to gamble and I cannot state definitely the number of times, but various times.

Q. Did you win or lose in those gambling games with Martinez?

A. Sometimes I lost, sometimes I won, but on one occasion in April he gave me a check of 2,000 pesos.

Q. Calling your attention to check No. 24039, dated April 21, 1903, for 2,000 pesos, bearing your endorsement, state whether or not that is the check you refer to as given by Francisco Martinez to you?

A. Yes, sir, it is the same and when I presented this check to the Bank for payment, it did not have the endorsement of Francisco Martinez on the back, which appears there now, but only his signature on the face.

203 Q. State to the Court how it happened that this check which was given on the 21st of April was not paid until the 7th of May, 1903?

A. On the very day this check was given to me I took it to the Bank and handed it to the Clerk and one of the clerks told me that the director refused to pay it; I then took back the check and went down to the desk of the director to find out the truth and the director told me that he could not pay this check, because the escritura was not yet settled and I should go and see Regidor about it. I went to the house of Regidor and Regidor told me that this check being for gambling he wanted to deduct one-half of it. On this proposition I did not accept of the payment and went to the house of Francisco Martinez and returned the check to him and asked him to give me the money and then Mr. Francisco Martinez told me to wait until the steamers arrived and that he would then and there pay me, but as I did not have money, after two weeks I went back to Mr. Regidor, he being my friend, and I requested to deduct only one-third of the amount and so it was agreed between us and on that very day we went to the Bank and in my presence he handed this check over to the director or manager and the director — me the check, telling me to go to the paying teller and there they paid me the 2,000 pesos in silver and I separated the 666 pesos, put it in a sack and took it to where Regidor was talking with the manager and I left it there and went away.

Q. What is the name of the manager or director to whom you refer?

A. Mr. Brown.

Adjourned until 8 A. M.

204 & 205

Proceedings Held March 8th-1906

Same appearances.

Witness RAMIREZ on the stand:

By Mr. GIBBS:

Q. Do you know in what manner Mr. Regidor was to profit by the purchase of these notes which you were employed to secure?

A. He told me he had a power of attorney from Francisco Martinez to purchase these pagares and charged a commission and fees.

Q. Did you take part in any gambling in which Francisco Martinez participated?

A. Several times.

Q. Where did you play?

A. In the house of Tomas del Rosario.

Q. Did you ever play anywhere else?

A. House of Isidro Martinez.

Q. Anywhere else?

A. In the house of one by the name of Aniceto, Calle Salcedo.

Q. What is the full name of the man Aniceto?

A. Mallari, I think.

Q. Is that the person whose name I gave the Clerk to subpoena?

A. Yes, sir.

Q. I think you stated that you won in those games; in what manner were you paid?

A. Mr. Francisco Martinez paid me by two promissory notes, one of 4,000 and another of 3,000.

Q. What disposition did you make of those promissory notes, one for 4,000 pesos and the other of 3,000 pesos?

206 A. One morning in the month of April, the date of which I do not remember, I talked to Regidor to see if he could endorse these pagares to the Bank and Mr. Regidor told me to return there some day when the Director of the Bank was there and so I did and I went there one morning between 8 and 9 and there I talked with Regidor and the Director of the Bank to endorse these pagares and the two of them, that is Regidor and the Director of the Bank agreed that I should endorse those pagares in the name of Sy Chuy Chim.

Judge OBLIN: I move to strike out the answer, for no authority has been shown to authorize Mr. Brown to endorse any pagares whatever and the Bank would not be bound by the action.

The COURT: Motion overruled, that is as to the objection whether Brown would make the Bank responsible by his endorsement on the paper or ordering it endorsed and his conduct with reference to such



paper is a question the Court reserves for the disposition of the case. Let him answer.

Judge ODLIN: Exception.

WITNESS: And so I did and then Regidor told me to get the approval of Francisco Martinez and after it was endorsed a note was made on the pagare stating "corriente a su vencimiento".

Q. Do you know whether those pagares were protested by the chino, Sy Shuy Chim or not?

Judge ODLIN: Objected to as the best evidence would be the protest itself.

Mr. GIBBS: It is merely preliminary.

The COURT: Objection overruled.

Judge ODLIN: Exception.

207 A. I believe Regidor had the pagares endorsed to another chino by the name of Chin Sy.

Judge ODLIN: Move to strike that out as hearsay.

The COURT: It is not competent.

Q. Calling your attention to two documents, Defendant's Exhibits 37 and 38, I will ask you to state whether the notes included within those two documents are the notes to which you refer in your last answer?

A. Yes, sir, they are.

Q. Do you know anything more of your own knowledge about those two notes than what you have already testified?

A. I sold these pagares for half their value to Mr. Regidor and Mr. Brown, for 3500 pesos and at the beginning the chinaman, Sy Chuy Chim was paid from the 3500 pesos and when the Casa Comision was opened, Azaola finished the payments.

Q. How did the chinaman, Sy Chuy Chim pay you and in what form for the portion of the 3500 pesos that he satisfied?

A. In speaking of the checks I meant the checks were signed by the chinaman and delivered to me by Regidor.

Q. On what Bank were these checks signed by Sy Chuy Chim given to you?

A. On the International Bank.

Q. And in what capacity did Azaola sign the checks on the International Bank by which you were paid the balance of this 3500 pesos?

A. As representative of the Casa Comision and I believe that in order that the Director of the Bank might know these checks were for those pagares, he used to put my name on the checks while the other checks were simply made "bearer".

Judge ODLIN: I object to so much of the answer as recites the opinion of the witness.

208 The COURT: What the witness believes about it is not competent; the part of the answer which recites the opinion of the witness is not competent.

Q. Do you remember about the dates when those were given to

you by the Chino, Sy Chuy Chim and by Azaola as manager of the Casa Comision?

A. If my memory serves me, from June, 1903 to January, 1904 These payments were made in installments.

Q. Do you know of any other promissory notes which were issued by Francisco Martinez to other persons gambling with him?

A. I have seen several but I do not remember now. I believe one of them is in favor of Don Tomas del Rosario.

Q. Who were the persons who played in those two places where you stated you played with the defendant?

A. In the house of Tomas del Rosario, there played myself, Francisco Martinez, Tomas del Rosario, Jose Escalante and another whom I do not remember.

Q. How frequently did you visit the house of Regidor?

A. I used to go there every week to collect that amount which was paid to me by installments; therefore I went there many times.

Q. State how frequently you found Mr. Brown there and at what times?

A. If I went there in the morning before 9 o'clock I always found him there; if I went there after eight o'clock in the evening I used to find him there too.

Q. What would Mr. Brown be doing when you found him there?

A. Always talking with Regidor.

Q. Did you have any difficulty in collecting the various sums that Regidor agreed to pay you?

A. Yes, sir.

Q. Calling your attention to Defendant's Exhibits 39, 40 and 41, I will ask you in whose handwriting each one of those letters is?

A. My handwriting.

Q. Do you know to whom they were delivered?

A. I will have to explain what occurred about these letters; from the time Mr. Regidor moved to the house of the Casa Comision on Calle Isla del Romero, he began to behave towards me as a great personage, as a king and I could not see him with so much frequency, because he always kept me waiting at the door and I tired of waiting and wrote the letters from the door to him, that is the reason why I did not sign these letters, and I believe I went so far as to insult him in these letters because of not succeeding in collecting what he owed me, although I attempted to collect.

Q. Whose handwriting if you know is this Defendant's Exhibit 42?

A. This letter must be of Roman Santos, now dead. This letter was addressed to me because Regidor told me to take Francisco Martinez there to the Casa Comision to sign the documents and escrituras and as I did not care to do so, I told him he could make use of Roman Lontoc and Julio Duenas, who always accompanied Francisco Martinez. Mr. Regidor begged me to speak to Roman Lontoc and Julio Duenas that they should bring Don Francisco Martinez to sign documents and that he would make them a present of thousands of pesos and I believe that the document having been

once signed, Regidor would not care to pay the money; this is the reason why Roman Lontoc directed this letter to me which I afterwards delivered to Regidor.

Q. Whose handwriting are these letters, Defendant's Exhibits 43, 44 and 45 in?

210 A. These two letters are signed by Ramon Lontoc, 44 and 45, and this other one, 43, I believe is in the handwriting of Julio Duenas.

Q. Do you know of any other facts of your own personal knowledge appearing upon these gambling operations and disposition of pagares signed by Martinez other than what you have already stated?

A. Do you mean pagares endorsed to the Bank?

Q. Yes?

A. That is all I know by being present; I know about some from hearsay.

Mr. GIBBS: That is all.

Plaintiff's Counsel moves to strike out the evidence of this witness for the reason that it has not been shown that R. W. Brown was vested with authority to transact or participate in the transactions testified to by the witness and therefore binding upon the plaintiff in this case, and for the further reason that it is not shown that the Bank derived any profit whatever from these transactions or that it ever ratified them.

The COURT: The question as to the Bank's liability for the conduct of Brown as testified to by the witness is reserved.

Mr. GALE: We offer the power of attorney in evidence as Defendant's Exhibit 46.

Judge ODLIN: No objection.

The COURT: Let it be admitted and so marked.

Cross-examination by Judge ODLIN:

Q. I understood you to testify yesterday that in connection with the note for 24,000 pesos held by Felix Herrera, you were  
211 offered 1200 pesos for your services, is that correct?

A. Yes, sir.

Q. But you only received actually, 200 pesos, is that correct?

A. Yes, sir.

Q. And the estate of Regidor owes you that 1,000 pesos still?

A. Yes, sir, as it shows in one of the letters exhibited here in which I was asking for the payment of 1,000 pesos. In one of these letters I refer to a pagare of Muscanana.

Q. Have you presented that claim to the estate of Mr. Regidor or to Mr. Gibbs as attorney for the estate?

Mr. GALE: Objected to as immaterial.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. I did not think it advisable to file a claim against the business of the Casa Comision which is in such a complicated condition.

Q. Have you had any conversation with Mr. Gibbs during the past week concerning that claim?

A. No, sir.

Judge ODLIN: That is all.

JULIO DUENAS, a witness for the defendants, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Julio Duenas, Calle Pablo Carrion No. 36, commission agent; 41 years of age.

Q. Do you know the handwriting in this letter, Defendant's Exhibit 42?

A. This is the handwriting of Ramon Lontoc who lived in 212 the house where I live.

Q. Is Lontoc alive now?

A. No, sir, he is dead.

Q. These exhibits 43, 44 and 45, in whose handwriting are they?

A. This one seems to be mine (Exhibit 43); the other two are of Lontoc, 44 and 45; these letters, Exhibits 39, 40 and 41 are not mine.

Q. Were you acquainted with Ricardo Regidor during his lifetime?

A. I knew him from Francisco Martinez.

Q. When did you become acquainted with him?

A. I cannot tell you the exact date, nor can I tell you the approximate date, if I tell you the approximate date it would be about the same as giving the exact date.

Q. How long have you known the defendant, Francisco Martinez?

A. Since I established my office on the Malecon Drive, 10 or 12 years ago.

Q. What was the character of your friendship with Francisco Martinez, intimate or casual?

A. Partly intimate and partly ordinary, because Francisco Martinez used to come to my house and take me with him.

Q. Did you have anything to do with the securing of the presence of Francisco Martinez to sign escrituras in the house of Regidor?

A. I believe so as I used to go to Mr. Regidor whom I know through Francisco Martinez in my commission business; I was also charged with orders about cascos; and also about the redemption of a house of Francisco Martinez which Regidor told me about in which if I succeeded in redeeming said house he would give me 5% and I redeemed this house from the purchaser to whom it was sold in pacto deretro and Mr. Regidor up to this date has 213 not paid me the commission due. At another time when I insisted upon collecting this commission he told me to write a letter to Mr. Brown.

Q. Do you know Lontoc?

A. Yes, sir, he lived in the same house with me.

Q. Are you the same person Lontoc refers to in this letter, Exhibit 42?

A. My name appears in this letter but I do not know whether it refers to me personally; the name of Julio appears here but the surname does not appear.

Q. Can't you tell me, reading that letter whether the facts stated there relate to you or not?

A. As Mr. Lontoc was also broke, I do not know whether he refers to this amount which Regidor and Brown failed to pay, that is why I would like to recite the history of the letter so the Court would know what occurred between myself, Regidor and Brown.

Q. I want first to know if the circumstances recited in that letter, Exhibit 42, are true or not?

A. As I have stated, I cannot tell whether this letter refers to me or refers to the escritura in which Regidor failed to pay was the commission for the redemption of the house.

Q. What house?

A. House on Calle Arranque.

Judge ODLIN: Plaintiff moves to strike out the testimony of the witness in this particular, because the property on Calle Arranque is not involved in either of the suits now on trial, nor is it mentioned in the pleadings in this case.

Mr. GIBBS: This is not offered for the purpose of showing the rights of the defendant over this property, but offered as to the fraud on the old man in pursuance of the conspiracy.

214 The COURT: I do not think the witness has any right to make any explanation of the letter, except as to whether he is individually referred to; let him confine his answer to that.

Q. You are sure this letter is not in your handwriting?

A. It is not written by me, you can compare it with the other letter I have here.

Q. Do you remember about how many documents you signed as witness for the signature of Francisco Martinez in connection with his obligations to the Bank?

A. I do not remember at this moment; three or four signatures.

Q. Do you know what documents this obligation of 149,000 pesos refers, to which you secured the signature of Martinez as referred to in this letter, Defendant's Exhibit 42?

Judge ODLIN: Plaintiff's counsel objects to the question because the witness has not testified he wrote the letter and his reference to the letter has not been sufficiently established to justify his testifying as to its contents and furthermore, the letter itself is not his.

Mr. GIBBS: Question withdrawn.

Q. Calling your attention to the first page of Defendant's Exhibit 42, to the language used in this letter of Lontoc directed to Manuel Ramirez, where it says, "Not only the escritura referred to has been signed two or three times, but also the liquidation of the account with said Bank of which we had not talked and which as the old man has said that he had not issued checks for more than 117,000 or 119,000 pesos, and as we have secured already his conformity for

149,000 pesos, we ought to call your attention to the fact that we should not be required to secure more signatures, etc."; now  
 215 you may state whether you know to what transaction that part of this letter, Exhibit 42, refers?

Judge ODLIN: Plaintiff's counsel objects to the question, because the attorney for the defendant has no right to frame questions to the witness based upon the contents of a document not introduced in evidence and which the witness himself swears he did not write.

Mr. GIBBS: I expect to offer the document in evidence.

The COURT: Objection sustained.

Mr. GIBBS: Exception.

Q. I call your attention to the document, Exhibit "A" attached to defendant's answer in case No. 3365, being an instrument dated February 12, 1904, and ask you to state whether that is your signature attached to that document?

A. Yes, sir, it is my signature.

Q. Whose are the other signatures?

A. Francisco Martinez, Ramon Lontoc and Mr. Brown.

Q. Were you present when all these others signed that document?

A. I was.

Q. Where was the document signed?

A. In Regidor's House.

Q. Are these your signatures on Exhibits 17, 18, 19, 20, 21, 22 and 23?

A. Yes, sir.

Q. I call your attention to Defendant's Exhibit 46, signed by Francisco Martinez and dated the 12th day of February, 1904, appearing as witnesses, Ramon Lontoc and the name of Julio Duenas; state whether or not the signature of Julio Duenas is your signature?

A. Yes, sir.

Q. Referring to this document and the other document  
 216 attached as Exhibits "A" to defendant's answer, two loose sheets of which you have stated were signed by you as a witness, you may state to the Court the circumstances and state where all those documents were signed?

A. At the house of Mr. Regidor.

Q. State to the Court the circumstances under which those documents were signed and who was present?

A. One day, the date of which I do not remember, Mr. Francisco Martinez called at my office and invited me to ride in his carromata; then dressed myself and went with Mr. Martinez; we took the carromata and went to the house of Regidor, which was called the Casa Comision. After we got upstairs in the house Mr. Francisco Martinez sent notice to Mr. Regidor at the office of the latter and he caused Francisco Martinez to enter; I and Mr. Lontoc remained at the door of the office. During the time Mr. Martinez remained in the office of Mr. Regidor we heard from the door, which was nearly closed, some discussions between Regidor, Brown and Francisco Martinez. Within a few minutes Senor Francisco Martinez came out of the office of Regidor and called me and Senor Lontoc; we entered inside the office of Senor Regidor and we found there, Mr.

Brown, Mr. Regidor and Senor Martinez and I do not remember at this time whether Mr. Cantero was also there or not; on the table which was standing there, I do not know how many loose sheets of typewritten paper there were; Mr. Brown and Mr. Regidor obligated Francisco Martinez to sign the documents which were there on the table.

Q. In what way did they obligate him to sign those documents?

A. They shouted at him to sign the documents.

217 Q. What if any objections, and how did Francisco Martinez act in reference to signing it?

A. After so many refusals on the part of Mr. Martinez and insistence on the part of Regidor and Brown, at last Francisco Martinez signed the documents. After Martinez signed, they directed themselves to us, I do not know whether it was Regidor, I believe it was Brown, telling us to sign also this document. I answered that I desired to inform myself of the contents of the document. One of them, I do not remember whether it was Mr. Brown or Mr. Regidor, shouted at me that there was no necessity for my knowing the contents of the document and the thing is whether you saw Francisco Martinez sign or not and answered yes, I have seen him sign; they answered "Well, your testimony in this case is only for the purpose of showing you saw Francisco Martinez sign." After the document was signed, Francisco Martinez, myself and Lontoc left. When we went down the stairs, I inquired of Francisco Martinez what discussions had taken place before we had entered the office of Regidor and he answered that they had insulted him because he did not sign the document and wanted to know why he always brought companions when he entered the house of Regidor. We then went to our house where Francisco Martinez separated and returned to his home.

Q. Did you ever receive any money from Regidor and Brown for your services in connection with Martinez?

A. I performed the services for the Casa Comision.

Q. Do you remember how many documents were signed there in the office of Regidor at that time?

A. Yes, sir, because the first time we were required to sign documents he told us the documents were of no use.

218 Q. To what documents did they make reference as being of no use?

A. To one of the documents we signed, the contents of which I cannot state and which they refused me knowledge of its contents.

Mr. GIBBS: That is all.

Judge ODLIN: Plaintiff's counsel moves to strike out the testimony of this witness with respect to the document marked Defendant's Exhibit 46, because the same bears date the 12th of February, 1904, and the Court has excluded evidence offered by the plaintiff concerning acts and statements of Francisco Martinez subsequent to the appointment of the guardian, which took place in November, 1903.

The COURT: Let the motion be overruled for the present. I will hear you on that and consider it along with the other proof in this case as to what effect it will have.

Judge ODLIN: Exception. That is all.



FRANCISCO ORTIGAS, a witness for the defendant, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, address and occupation?

A. Francisco Ortigas, attorney at law, Plaza Santa Ana No. 8.

Q. Do you know Ricardo Regidor in his life time?

A. Yes, sir.

Q. Are you acquainted with the defendant, Francisco Martinez?

A. Yes, sir.

Q. How long have you known him?

219 A. About four or five years.

Q. Have you ever acted as attorney for Francisco Martinez?

A. Yes, sir, but for a very short time.

Q. At about what time were you acting as his attorney?

A. About probably the middle four months of 1903.

Q. State whether or not you had anything to do with the proceedings for the declaration of prodigality of the defendant, Francisco Martinez?

A. I remember that at that time I signed a petition asking that Francisco Martinez be declared a prodigal.

Q. Calling your attention to the first document in case No. 1809, entitled Francisco Ortiz for the appointing of a guardian of Francisco Martinez, I will ask you to state whether that is the document signed by you bearing date the 16th of May, 1903?

A. Yes, sir it is the same.

Q. State what was the condition of Francisco Martinez with reference to his mental capacity at that time and what you observed with reference to him to induce you to sign this petition to the court?

A. The reason I had as I remember it for presenting this petition was, because he came to my office accompanied by a gentleman whom I knew who presented him to me and recommended him to me, asking me to take up the matter because they had a very important one. The old man then explained to me that he was entirely at the mercy of Don Ricardo Regidor, that he was made to sign power of attorney, the conditions of which he did not remember. He also stated that he had signed and issued various promissory notes in gambling and Regidor purchased them through other persons with large discounts, but demanded of the holders that 20 they should acknowledge having received the entire amount thereof. And that also, through the mediation of Ricardo Regidor he had secured a credit in the International Bank, but that he could not issue any check because the Bank would not pay any check unless Regidor approved it, or put a special sign upon it. In addition thereto, Regidor kept the check-book; that on one occasion he needed 3,000 pesos to redeem some jewelry that he had pledged to the Monte de Piedad; that he had told Regidor he needed to issue a check for this amount and Regidor consented; he issued the check; Regidor told him that he, himself, would take charge of redeeming the jewelry and as a matter of fact he delivered the check to Regidor



and the ticket of pledge of the jewelry and Regidor had not returned to him the ticket nor the money nor the jewelry. As I had information to the effect that the defendant, Martinez was a man who had no character of any kind and on the other hand I knew only too well, Senor Regidor, and I told him I would only take his defense on condition that he should continue with me and should not pay any attention to any of the threats which Regidor might make towards him because I was certain at the time Mr. Martinez talked to me that the first time Regidor knew that Martinez was about to escape from his hands, because I knew that Mr. Regidor had placed about Martinez a sort of a guard who notified him of almost every step Mr. Martinez took, I told Mr. Martinez that it would be a very delicate matter for me if in a few days after I instituted a campaign against Regidor that he should become frightened by the threats of Regidor and he would allow him to seduce him from his stand and that Regidor would again have the laugh on me. He assured me

221 then that under no circumstances would he return and fall into the hands of Regidor, that if he should continue longer under similar circumstances that he would become entirely ruined. I asked Martinez to return the follow- or the next day following to my office. As a matter of fact he returned in two days and the first thing I advised him to do was to revoke his power of attorney that Regidor had made him sign, I believe in favor of Senor Cantero. I assured him that this was the most urgent matter and he told me that I could then prepare the document of revocation and he also told me to prepare another power of attorney in my own favor. I prepared those documents and I believe the next or the second day I sent a notice to him to come to my office and he came and said he would sign the documents, but told me to wait some days, because probably he would be able to secure from Regidor that he would return to him the jewelry redeemed, and some amount that I believe he had delivered to him to cancel and satisfy certain loans of property of his, which I think existed previous to the time he entered into negotiations with the Bank and as I remember it, the Bank had demanded of him that he redeem these properties. As a matter of fact, seven or eight days transpired and Martinez did not return and I sent him notice and he came to my office and told me that he was afraid to initiate the campaign because as Regidor had a great deal of influence over Mr. Brown and he having sold the right of redemption of his properties to the International Bank and that the period of same had about expired, if he should quarrel with Regidor and the Bank would not give him any extension whatever they would retain his property. I then told him that I could guarantee that the Bank would not in any manner continue

222 with or retain these properties; that if Regidor did have any influence over Mr. Brown, I could convince Mr.

Brown that he should not take any such determination of this character. He apparently became convinced but did not sign the documents. He left and never returned there again. Two or three times afterwards I talked with the gentleman who recommended him to me and I believe it was this gentleman told me that

Martinez did not wish to return to my office because he was very much afraid of Mr. Regidor. These were the reasons I had for presenting this petition.

Q. Did you have any connection or anything to do with any checks which were issued by Mr. Martinez, the defendant, on the International Bank?

A. Yes, sir.

Q. I call your attention to check No. 24037, dated April 20, 1903, for the sum of 4,000 pesos payable to Ramon R. Papa, and ask you to state whether or not that is a check in payment of which you intervened?

A. Yes, sir.

Q. Relate to the Court the circumstances and history of your connection with that check from beginning to end?

A. I remember that some time after Mr. Martinez no longer returned to my office and also after having presented this motion, Mr. Papa came to our office and spoke with Mr. Del Pan and afterwards Mr. Del Pan called me in order that I might hear the explanations made by Mr. Papa about this check.

Judge ODLIN: I object to the recital of this conversation.

The COURT: Objection sustained.

Q. You may state whether as a result of your interview  
223 with Mr. Papa in your office you went to see the manager of the Bank, Mr. Brown?

A. Yes, sir, I went to see Mr. Brown to collect this check.

Q. Please state to the Court what conversation, if any, you had with Mr. Brown and what took place there?

A. Yes, sir, I had a conversation with Mr. Brown and asked him what reasons he had for not paying this check and he told me that this check had been issued by Martinez, either in a game or as the result of a game; I then asked him if Martinez had funds with which to pay this check and he answered "Yes". I asked him if Martinez had given any order to the effect that this check should not be paid and he answered "No". I asked him if he doubted the authenticity of the signature to the check and he replied that he did not doubt it. I asked him if he understood that Martinez had published any notice in the paper to the effect that this check had been lost or stolen and he answered that he did not know of any notice of that character. Then I told him that he had no right whatever to investigate for what purpose Senor Martinez had issued this check, because it would be intervening in matters that were none of his business. He said he did not wish to pay the check because he feared that he would have trouble. I then told him that I believed that with his attitude that he would not only arouse trouble, but that rather he was hunting for it and told him that probably at exactly that time he was not having a tranquil conscience and he asked why "Do you say this to me" and I replied that I remembered very well all the facts relating to this check, he understanding in what direction the shot came and he told me that it was true that Senor Papa had offered him a present of 500 pesos if he would pay the check at

224 once and in order that he should not have to return many times as he had already done; that this had occurred the day previous to the one when we were talking and I asked him then what answer Senor Papa made to him and he answered that he should return the following day and I told him that this was not a proper answer to the proposition which Senor Papa had made to him that in my opinion his reputation was already "shady" as shown by the fact that when a man like Senor Papa who had no friendship or relations with him should dare to offer him a present of 500 pesos because probably a present of 500,000 pesos or something else could give rise to a greater daring on the part of a person, even without any question of friendship which was lacking in the case of Papa. After this conference he told me I ought to go and see Robles, the attorney, who was the attorney for the International Bank. I told him I was going to see Mr. Robles, not because I thought it necessary exactly, but for the purpose of collecting the check and for the purpose of telling him once for all that he ought not continue acting as attorney for the Bank because sometimes he was consulted and other times Regidor. I went to see Senor Robles and explained to him all that had occurred with Mr. Brown and Senor Robles immediately issued his own check and gave it in exchange for this check of Senor Papa which check of Senor Robles I delivered to Senor Papa and he collected it.

Q. About the time of the occurrence of the facts related by you or soon thereafter, did you relate them to any other person connected with the Bank?

A. Yes, sir, I believe I related them to Mr. Barrera and Senor Barrera was the notary public of the International Bank and  
225 I remember I related these same facts in the office of Mr. Kinney, the attorney for the Bank, directing myself I believe to Mr. Kinney and Mr. Lawrence and stated to them at that time that I was willing to testify to these facts any time they might desire.

Q. To refresh your memory, did you say anything to Mr. Brown during your conversation with him about his relations with Mr. Barrera as notary public?

A. Yes, sir.

Q. What was that part of the conversation?

A. It was with reference to another matter which had nothing to do with this check. I had informed myself, when we were talking on the day before, that he had paid an account of Senor Azaola for these documents of sale with the right to redeem by Martinez to the Bank and I believe the account was for 5,000 and some pesos. I told Mr. Brown that he had done wrong in paying that account because by making that payment he had violated the promise he made to me not to give a visit to Francisco Martinez or pay any of his check- which promise I had secured from him, because I knew that the greater part of the money which Martinez secured from the International Bank would fall into the hands of Regidor, and Mr. Brown had then promised me that he would not pay any check of Martinez and I then asked him why he violated this promise which

he made to me and he told me that inasmuch as they were documents which he had placed in Mr. Azaola's hands to be prepared that he believed that he should be paid for them and asked him, why have you not placed all these escrituras and documents in the hands of Mr. Barrera to execute as he is the notary public of the Bank and he told me that he had given them to Mr. Azaola because Regidor had intervened in the business, to which I answered then that this surely was not the reason, otherwise if he had entrusted the making of these escrituras to Senor Barrera he would not have been able at any time to participate in the fees corresponding to these escrituras, not only because Senor Barrera would have presented an account of 400 or 500 pesos, but also because Senor Barrera does not permit a division of his fees with any one and that even though no one had told me, I could assure him that part of this 5,000 pesos and odd had fallen into his own pockets. He told me then that it was slandering him and I told him then that I could also find out another person who would swear before him that the fact of the commission Regidor had collected from this person for opening a small credit for him in the Bank had also fallen into his, Brown's pockets.

Mr. GIBBS: That is all. No, just another question.

Q. Did you talk to him about these Jose Gervacio Garcia matters with Mr. Brown?

A. Yes, sir.

Q. Please state that conversation?

A. I told him that I had been informed that same morning that also Jose Gervacio Garcia, who was an agent of Senor Azaola to carry the documents to the registry and to get them after they were registered had collected 300 pesos against the account of Martinez; at first he attempted to deny the fact but afterwards I explained to him that I had become informed even to the details that at first even he, Brown, himself had refused to pay these 300 pesos when Senor Jose Gervacio Garcia returned to the Bank accompanied by a notary public and ordered the Notary Public to make a record demanding of Brown that he pay the 300 pesos and protesting in case of not paying him and that he was going to go to the Prosecuting Attorney's office or something of that kind and Senor Brown paid the 300 pesos then.

Q. What did Mr. Brown then say as to whether or not it was true?

A. He then said yes, it was true that he had paid the 300 pesos.

Q. What explanation did he make for doing so?

A. He did not give any.

Mr. GIBBS: That is all.

Cross-examination by Judge ODLIN:

Q. When you secured the check of Senor Robles for 4,000 pesos in place of the Papa check for 4,000 pesos, was in June wasn't it?

A. I cannot state the month, but about the middle of 1903.

Q. It was after the month of May wasn't it?

A. I believe so.

Judge ODLIN: That is all.

RAMON RUFINO PAPA, a witness for the defense, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Ramon Rufino Papa, doctor, Calle San Pedro, No. 200.

Q. Do you know Francisco Martinez?

A. Yes, sir.

Q. Did you know Ricardo Regidor in his lifetime?

A. By name.

Q. I call your attention to check No. 24037 dated April  
228 20, 1903, for 4,000 pesos, drawn in your favor and ask you to state whether or not you ever saw that check before?

A. Yes, sir, I have.

Q. State whether you presented that check to the Bank for collection?

A. Yes, sir, it was presented to the Bank for collection.

Q. Please state what occurred; give a history of the transaction from the time of receiving the check until the time of its collection, if you collected it?

A. After receiving this check I sent it with my brother to the Bank for collection and they answered that they could not pay because there was a policy to arrange.

The COURT: That is not competent.

Q. Did your brother collect the money?

A. No, sir, he could not collect it and returned it to me.

Q. Then what did you do?

A. Then I went to the house of Senor Martinez and told him I had not been able to collect the check; then Mr. Martinez told me that he would go to the Bank to talk with the manager; then I went the following day to learn the answer and decision of Mr. Martinez and he not being present I went to the Bank and presented the check which was refused and on payment being refused I undertook to see the manager of the Bank personally and I asked him if he denied the authenticity of the signature of Francisco Martinez and he told me that I should return the following day and that he would give me an answer and I returned in the morning of the following day and talked again with the same director of the Bank and asked him if I could then collect this check because in addition to this Mr. Martinez had told me that I  
229 could then collect it and that he himself had gone to talk with the director of the Bank. Then I went to the Director of the Bank and requested him again to pay me and he told me that he desired that Mr. Martinez should come to the Bank and talk with him. Then I understood that there was some reason inexplicable about the collection of the check and I offered to make a present

of 500 pesos to cash the check, on condition that I could realize the collection of this check in order not to tire myself returning so many times; then on making this statement to him he asked me to return on the second day; then I went to the office of Ortigas and delivered him this check for the purpose of securing its collection and the following day after having delivered him the check I returned and Mr. Ortigas delivered me a check in payment and told me he had been able to collect.

Q. In what form did he pay you the amount of that check?

A. He paid me in check, but I do not remember what kind of a check; I put it in an envelope and sent it for collection.

Q. For what purpose was this check of 4,000 pesos you hold in your hand given to you by Francisco Martinez?

A. This is part of an amount of 15,000 pesos Francisco Martinez owed me and he paid me this on account of that debt.

Q. For what did he owe you this 15,000 pesos?

A. He took a loan from me of 15,000 pesos, payable in six months and the month of April which is the date of the document he executed before a notary public, I went to his house to collect and he delivered me this check of P4,000.

Q. Isn't it a fact that this money was delivered to you in payment of gambling operations?

A. No, sir.

Q. Was it not delivered to you as a result of a gambling operation contracted by Francisco Martinez?

A. No, sir, he delivered this check to me in part payment of a debt he owed me.

Q. Did you ever deliver to Francisco Martinez 15,000 pesos? In cash?

A. Yes, sir.

Q. Where and when?

A. I delivered the money into the Notary's office of Mr. Barrera.

Q. In what form was this money at the time you delivered it in the presence of Mr. Barrera?

A. I delivered it to him in accordance with an agreement which we had.

Q. You have stated you delivered this money to him in the presence of Mr. Barrera; will you tell the Court in what form or shape this money was at the time you delivered it, silver or checks or what?

A. In bills and part in silver.

Q. For the full amount of 15,000 pesos?

A. Yes, sir, bills and silver.

Q. And you have no knowledge of any gambling operations which in any manner entered into or formed a part of those obligations of 15,000 pesos?

A. No, sir.

Q. Do you know for what purpose Francisco Martinez borrowed these 15,000 pesos from you?

A. He spoke to me about loaning him 15,000 pesos to pay  
231 a debt he owed a friend. I then told him that I would give  
him the amount, provided he would surrender to me part of  
the documents of his houses which I understood he had and which  
were rented. He then told me that he could not dispose of the docu-  
ments pertaining to his property because there was a question be-  
tween him and his son.

Q. Where did you get those 15,000 pesos in cash which you de-  
livered to Martinez in the presence of Barrera?

The COURT: You are cross-examining your own witness.

Judge ODLIN: I have not objected to *ti*; but I object to it if he  
does not connect it with Mr. Brown or the Bank.

A. From my safe at home.

Q. Did you have an account in a bank at that time?

Judge ODLIN: Objected to as immaterial.

The COURT: Objection sustained.

Q. Was not one of the reasons given to you by Mr. Brown for  
not paying the check when you first presented it, because it was for  
gambling?

Judge ODLIN: Objected to as improper and leading.

The COURT: Objection sustained.

Q. What were the reasons given by Mr. Brown for not paying  
this check when you notified him personally?

A. Finally he told me that Mr. Martinez should go over there  
to have a conference with him, Brown.

Q. Is that the only reason he gave?

A. Yes, sir, because he turned over the check and tried to find  
out if any signature was on it and then told me Martinez should  
come back and have a talk with him.

Q. Whose signature is that on the back?

232 A. The first time the check was delivered to me it did not  
have the signature on the back of it.

Q. Whose is that signature?

A. In the middle of the back of the check appears the signature  
of my brother.

Q. What is your brother's name, Juan?

A. Yes, sir.

Q. Do you know whose mark that is on the back of the check like  
a rubricate?

A. I do not know because when my brother failed to collect this  
amount and returned it to me I gave it back to Mr. Martinez and  
when I went to Mr. Martinez to take back the check I found there  
was a rubricate on the back of it.

Q. Did you ever gamble with Francisco Martinez?

A. No, sir.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

Adjourned until March 8th, 2:30 P. M.



Proceedings Held March 8th, 1903, 2:30 P. M.

Same appearances.

Witness W. H. TAYLOR recalled for further cross-examination.

By Mr. GIBBS:

Q. Calling your attention to the item of July 10, 1903, in the pass-book of Francisco Martinez which you have heretofore mentioned, consisting of a balance of pagares of 20,250 pesos debited as 20,000 pesos, and charged the balance of 250 pesos to Francisco Martinez, please state how that transaction came about?

A. The history of the transaction is this: the pagare was credited to the account of Lorenzo del Rosario April 8th, 1903, being 16,000 pesos Mex., less discount; June 30th, 1903, 4,000 pesos and July 10th a corresponding entry to the debit, a credit of account of Francisco Martinez of 250 pesos Mexican, the total of 20,250 pesos makes as mentioned in the pass-book.

Q. By whom according to your investigation was this pagare of 20,250 pesos endorsed to the Bank?

A. It was received and credited to the account of Lorenzo del Rosario and it was endorsed by him, he has the credit.

Q. Your books do not show who the owner of the note was?

A. It does not show the previous endorsements; we hold the last endorser responsible.

Q. Your books do not describe the note?

A. No, it simply shows local bill discount.

Mr. GIBBS: That is all.

Redirect examination by Judge ODLIN:

Q. The note itself is not in the Bank?

A. No, sir.

Q. Have you ever seen that note after your arrival?

A. No, sir, I am simply testifying from book entries.

Judge ODLIN: That is all.

Cross-examination by Mr. GIBBS:

Q. Have you looked for the note?

A. I have charge of all the securities for the Bank and know that the note is not among them.

Q. You do not know what became of it?

A. No, sir.

Mr. GIBBS: That is all.

234 SEBASTIAN LOZANO, a witness for the defense, being duly sworn by Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Sebastian Lozano, broker, live in Malate, Calle "C" No. 44.



Q. Were you acquainted with Mr. Ricardo Regidor in his lifetime?

A. Yes, sir.

Q. Do you know Mr. Brown?

A. Yes, sir.

Q. And Mr. Cantero?

A. Yes, sir.

Q. How long have you known Mr. Brown?

A. Since he was director of the Chartered Bank; for a long time.

Q. State to the Court whether you were intimately acquainted with Mr. Brown?

A. When the International Bank was established we had some intimacy with him.

Q. State whether you intervened between him and Mr. Regidor in the matter of Regidor's securing a credit with the International Bank?

A. I will explain it from the begining. When the International Bank was opened I presented myself to Mr. Brown as a broker to see if I could do business with the Bank and he said whenever those operations might be all right that he would accept. He carried out some without any one's intervention. At this time Mr. Regidor asked me to see if I could influence Mr. Brown to have him advance to Mr. Regidor 1,000 pesos guaranteeing the payment with two or three receipts for rents of his property in Calle Magallanes. I went to see Mr. Brown and presented the request and he flatly refused saying that he did not want anything to do with Mr. Regidor.

I communicated the answer to Mr. Regidor and he told me that he would see Mr. Brown himself. As a matter of fact two or three days after I found out that he had secured a credit with Mr. Brown because he had a current account and a check book. Afterwards there was presented an application for a loan for the establishment of Felipa & Sons for the sum of 25,000 pesos. I proposed it to Mr. Brown and Mr. Brown said that I should communicate with Mr. Regidor. I objected at first, but seeing that I would have to lose the opportunity to make money I dealt with Mr. Regidor and with his intervention the operation was carried out on the condition that I should divide the commission with him and I collected 500 pesos and I gave to Regidor 250 pesos. Afterwards in view of the fact that I had to give him half the commission I retired from the Bank and did not attempt to make any further deals, because I saw that Mr. Regidor had a great intimacy with Mr. Brown and no chances for me.

Q. State whether or not Mr. Regidor made any statement in reference to dividing the profits with Mr. Brown?

A. He told me personally on various occasions that he divided profits with Mr. Brown.

Q. Did you ever sign any promissory notes at the instance of Mr. Regidor in favor of Francisco Martinez?

A. I remember having signed one or two.

Q. Calling your attention to Defendant's Exhibit 65, I will ask you to state whether that is your signature?

A. Yes, sir, that is my signature.

236 Q. State the circumstances surrounding the signing of that note by you?

A. Mr. Regidor attempted to get this amount from Francisco Martinez and there being no other person to sign with him he invited me to attach my signature thereto, he retaining the money because although I remember that he gave me a check for 1,000 pesos I went to the Bank to collect it and I delivered the money to Regidor and from this there was nothing to be given to me, I had not performed any services for which either he or Captain Tico should pay me 1,000 pesos.

Q. Who is Captain Tico; do you mean Francisco Martinez?

A. Yes, sir.

Q. Did you receive any compensation for signing that note for Regidor?

A. No, sir.

Q. State whether or not you received any other checks from Regidor or Cantero in connection with the Martinez matter which were collected and endorsed by you?

A. Sometimes, but I do not remember how many but the checks were given to acquire promissory notes of Francisco Martinez.

Q. What class of promissory notes were these being acquired of Francisco Martinez?

A. Various promissory notes were in circulation held by various people and Regidor entrusted me to search for and collect such as I could get and taking the holders thereof to Regidor to agree upon the sum which they were to receive in exchange for the promissory notes.

237 Q. I call your attention to Check No. 27288 for 3500 pesos signed by Pedro Cantero and drawn on the International Bank bearing what appears to be your endorsement; state whether that is your endorsement?

A. Yes, sir it is.

Q. Do you know what the countersign is above your name there?

A. It is the countersign which Mr. Regidor put on the checks in the Martinez matter, in order that Brown should understand to pay them and without which he would not pay the checks.

Q. State the circumstances surrounding the presentation and endorsement of that check?

A. This was to acquire the promissory note of one, Gonzalez Reyes. This promissory note was presented to Mr. Regidor through the work of Don Francisco Rodriguez. I do not remember just what amount the holder of the promissory note received nor how much was distributed amongst the others; for my work Regidor gave me 50 pesos.

Q. Do you know whether Senor Basa intervened in that pagare in any manner?

A. I do not remember the pagare for 22,500 pesos, either 22,000 or 32,000 pesos, I do not remember.

Q. You have referred to having endorsed and presented various checks in relation to the Martinez matter and you may state whether

any of the proceeds of those checks which were endorsed and collected by you were for you?

A. No, sir, all for Regidor.

Q. State whether previous to the time you assisted Regidor in these matters to which you have referred, or at any time after the relationship between Brown and Regidor began, you talked with Mr. Brown about his relationship with Regidor?

238 A. Yes, sir, I have talked with him in some occasions, explaining to him how prejudicial to him were his relations with Regidor, but he always stated that there were no relations between him and Regidor.

Mr. GIBBS: That is all.

Cross-examination by Judge ODLIN:

Q. Are you married or single?

A. Married.

Q. State your wife's name?

A. Carmen Martinez.

Q. Is she any relation to Francisco Martinez?

A. No, sir.

Q. How long have you known Francisco Martinez?

A. Since he had dealings with Regidor.

Q. And your wife's father's name was Tomas Martinez wasn't it?

A. Yes, sir.

Q. Was there any business relations between him and Francisco Martinez?

A. They do not know each other.

Q. When did Mr. Brown tell you he had no business relations with Regidor?

A. Before the Casa Comision was established.

Q. That was in the year 1902?

A. I do not remember well. I believe so.

Q. Why did you tell Mr. Brown that it would be prejudicial to his interests to have business relations with Mr. Regidor?

A. Because I know by my own experience that Regidor intervened in the operations he had with the Bank.

239 Q. Why should that fact make it prejudicial to Brown to have business relations with Regidor?

A. By the history of Mr. Regidor.

Q. What do you mean by that?

A. Because of the law suits he had with the Hongkong Bank.

Q. Regidor won that suit did he not?

Mr. GIBBS: Objected to as immaterial.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. I do not know what became of it afterwards.

Q. Do you mean to tell this Court that your only reason for speaking as you did to Mr. Brown was the fact that Regidor had had a law suit with another Bank?

A. From the confessions made to me in private by Ricardo Regidor, himself.

Q. Were those confessions made to you by Regidor, statements of wrongful acts committed by him; what do you mean by wrongful acts?

A. He told me that he must have money either one way or the other.

Q. Did Mr. Regidor tell you that in confidence?

A. Yes, sir.

Q. And you went and repeated that conversation to Brown?

A. Yes, sir, and I know that several other persons went to talk with Brown.

Q. And after the conversation with Brown you went yourself and had conversation with Regidor didn't you?

A. No, sir, I had simply a friendly relation with Regidor.

Q. Have you not testified that you signed a certain promissory note at the request of Regidor?

A. Yes, sir.

Q. Don't you call that business?

240 A. I call that because he asked me to do it and he told me that there would be no harm come to me from it.

Q. In other words you, knowing Regidor was a rascal, you did what he wanted you to do?

A. Because I trusted in him that he would not compromise me.

Judge ODLIN: That is all.

JOSE BASA, a witness for the defendants, being duly sworn by Mr. Heras in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Jose Basa, attorney at law, not practicing, live at No. 143 Calle San Nicholas.

Q. State whether you had any connection with the purchase of any promissory notes of Francisco Martinez in which Don Ricardo Regidor intervened?

A. I remember that at one time a friend of mine requested me to find a person who would buy a promissory note.

Q. Whose promissory note was this and how much did it amount to?

A. I do not remember the pagare but what I did was to find a man and accidentally came across Mr. Regidor and asked him if he wanted to buy that promissory note.

Q. What did you do about that; give the history of the transaction?

A. Having found out Mr. Regidor wished to buy I proposed to the owner of the pagare if he wished to sell the promissory note in a certain amount and the owner of the promissory note answered yes, and an employee of the owner carried the note in my company to Regidor's house.

241 Q. What was done with the note?

A. It was changed for a check issued by Regidor and the same employee of the owner of the pagare carried the check to the Bank to collect it.

Q. Who signed this check?

A. I do not remember now after three or four years.

Q. Do you remember the amount of that check?

A. About 2,000 or 3,000 pesos, which I do not remember.

Q. Would you recognize the check if you saw it?

A. Yes, sir.

Q. I call your attention to Defendant's Exhibit 79, being check No. 27285 for 3,000 -esos and ask you to state whether that is the check?

A. Yes, sir.

Q. Who was the owner of the promissory note that was purchased by that check?

A. Don Tomas del Rosario.

Q. The present Governor of Bataan?

A. Yes, sir.

Q. You do not remember the amount of the note?

A. No, sir.

Q. What compensation did you receive for securing this operation between the owner of this note and Mr. Regidor?

A. I did not get any commission from Regidor.

Q. By whom were you paid for your services?

A. As a companion and friend of Mr. Del Rosario he gave me a small amount as a token of his gratitude.

Q. You are the same Jose Basa who was connected with the Casa Comision of Pilar Corrales are you not?

A. Yes, sir, a long time afterwards.

Q. You do not mean to say that was after the giving of this check do you?

A. Yes, sir, long after.

242 Q. That is to say, the giving of the check was long after the time when you were connected with the Casa Comision of Pilar Corrales?

A. That was a long time before.

Q. How long had you known Ricardo Regidor previous to the time of bringing about this operation?

A. I knew his brother very well, he was my companion, he is now in London, but Don Ricardo was never a companion of mine or anything.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

JOSE GERVACIO GARCIA, a witness for the defendant, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Jose Gervacio Garcia, teacher, live in Tondo, Manila.

Q. Were you acquainted with Don Ricardo Regidor?

A. Yes, sir.

Q. How long did you know him in his lifetime?

A. Since I was procurador of the audiencia.

Q. Did you have any business relations with Don Ricardo Regidor along in the years 1902 and 1903 or either of those years?

A. I do not know what you wish to say by business.

Q. Were you employed by Don Ricardo Regidor in any capacity?

A. Yes, sir.

Q. When and in what capacity?

A. At the beginning of the establishment of the Casa Comision.

243 Q. Do you know Don Francisco Martinez?

A. Yes, sir.

Q. How long have you known him?

A. Since the beginning of the establishment of the Casa Comision, that is here in Plaza Santo Tomas.

Q. Was it not in the office of Vicente G. Azaola that you were employed by him first?

A. Yes, sir.

Q. Before the establishment of the Casa Comision?

A. What do you call the Casa Comision?

Q. The Casa Comision of Martinez Gallegos & Co. or the Casa Comision of Pilar Corrales?

A. I do not know what Casa Comision that was, it was here in a house on Santo Tomas.

Q. Did you intervene as a witness or otherwise in the execution of various documents by Francisco Martinez in favor of the International Bank and the house of Regidor?

A. Yes, sir, I believe I did in some.

Q. Did you undertake to collect at one time 300 pesos from the International Banking Corporation on account of escrituras executed in connection with the Martinez matter?

A. For the services I performed, yes, sir.

Q. State what occurred when you presented that account to the bank for collection?

A. Mr. Brown did not want to make me payment and I went immediately to have a notarial act to compel him to pay me.

Q. What sort of conversation did you have with Mr. Brown about that matter?

A. That I went there to collect money due to me by the sweat of my brow and did not go there to play with either Brown or Regidor.

244 Q. What more did you say to Mr. Brown, if anything?

A. I charged him with being in combination with Regidor and Francisco Martinez.

Q. What else?

A. I do not remember what all I told him but I spoke to him about checks and check books.

Q. Did you collect your money?

A. Yes, sir, then I bid my last good-bye to him because I did

not care to go into the courts and have trouble, because I knew what was going to happen.

Q. At the time you told Mr. Brown that he was in combination with Regidor to rob Martinez, what facts did you refer to?

A. I referred to the fact that always the checks were countersigned by Regidor; Brown refused to pay them unless they were.

Q. Anything else?

A. And from the facts I heard and knew.

Q. Do you know of any particular facts of your own personal knowledge with reference to the cheating of Francisco Martinez?

A. Yes, sir.

Q. Just relate them to the Court.

A. The facts relating to the making of pagares and documents and with other persons.

Q. What promissory notes do you refer to?

A. A large portion of the pagares that were in circulation and which I do not remember now.

Mr. GIBBS: That is all.

Judge OBLIN: No cross-examination.

FRANCISCO RODRIGUEZ, a witness for the defense, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

245 Q. What is your name, residence and occupation?

A. Francisco Rodriguez, Saapedra; no occupation; 66 years of age; Calle Anda No. 228.

Q. Were you acquainted with Don Ricardo Regidor during his lifetime?

A. Yes, sir.

Q. Are you acquainted with the defendant, Francisco Martinez?

A. Yes, sir.

Q. Do you know R. W. Brown?

A. Yes, sir. I know him by sight by having seen him in Regidor's house.

Q. How often and when did you see Mr. Brown in Regidor's house?

A. Only two or three times when he lived on Calle Palacio formerly the Casa Comision.

Q. State whether or not you had any connection with the purchase of gambling promissory notes of Francisco Martinez for Regidor?

A. For gambling, I do not know whether they were for gambling. Having met one day Senor Martinez in the house of Regidor, not knowing Martinez at that time, Senor Regidor told me that he was a man who had opened a current account in the International Bank and that he had issued a considerable number of promissory notes to be paid out at different period- and that if I could ascertain in whose possession these promissory notes were he could discount them and he authorized me, in order that if I should find any that I could offer up to 33%; then I told him, how can I offer and compro-

mise myself to do this without understanding whether Regidor had the funds, because I knew that Regidor did not have any money and he told me that he depended upon the director of the International Bank to furnish him the money. Then as I did not know the persons in Manila, I availed myself of Don Joaquin Lafont and he gave me a note—

Judge ODLIN: Objected to as the witness cannot tell what happened with his friend.

WITNESS: I am very ill and cannot talk any more. Can't you allow me to write out my testimony and submit it, because it is very difficult for me to talk.

Judge ODLIN and Mr. GIBBS: We can arrange about that.

The COURT: As the witness is ill, let him be excused for the present.

ALFREDO CHICOTE, a witness for the defense, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Alfredo Chicote, attorney at law, live in Manila.

Q. Have you ever been attorney for Francisco Martinez, the defendant in this case; if so, when?

A. I have been an attorney of Francisco Martinez since the 5th or 6th of November, 1903.

Q. Were you ever consulted by him with reference to his dealings with Ricardo Regidor in the International Bank and if so, when?

A. Sometime after my having taken charge for Mr. Martinez to represent him in appeal before the Supreme Court, he informed me of the existence of certain accounts of his with the International Bank and with Don Ricardo Regidor; he did not know at that time exactly the amount he owed to the Bank but he gave me an amount, saying that it was in the neighborhood of 150,000 or 160,000 pesos and he also told me that Senor Regidor was in debt to him, Martinez, some 50,000 or 60,000 pesos.

Q. Did you ever talk with Don Ricardo Regidor in relation to some charges made against Francisco Martinez amounting to 9,000 pesos and a check of 30,000 pesos?

A. Desiring to understand what there was in reference to the accounts between Martinez and the International Bank I told Senor Martinez that he should demand from the Bank a statement of his account and he obtained from the Bank an extract of accounts which was not either signed or stamped by anybody. It was a list of numbers giving the numbers and amounts of each of these checks. In my office Mr. Martinez accompanied by one, Lontoc and another witness called, Julio Duenas and I went over each one of these items, number by number and quantity by quantity and questioned Senor Martinez.

Mr. GIBBS: I ask that the statement of Martinez repeated by the witness in response to my first question be stricken out as in-



competent as such statements of Martinez have already been excluded by the Court. I ask that that part of the witness's answer in reply to the question of mine as to whether he had ever been consulted by the defendant, Francisco Martinez, and which the witness went on to relate what Martinez had said to him, that part purporting to give the statements made by Martinez to him be stricken out, for the reason that it is not responsive to the question and the Court has also excluded all evidence on that subject.

Judge ODLIN: They have put this witness on the stand, knowing that his connection was after the declaration of prodigality and want to introduce parts of his testimony. If it is admissible at all, the whole is admissible.

The COURT: I reserve ruling until you show what the consultation refers to.

248 Mr. GIBBS:

Q. This conversation which you had with Martinez all refers to his account and you stated that was after the appeal which you interposed for him; in what case was that appeal interposed?

A. In the case in which Senor Martinez was declared a prodigal, and incompetent.

Mr. GIBBS: I now renew my motion to strike it out.

The COURT: The witness's statement as to what Martinez said after adjudication as an incompetent, is not admissible or competent.

Judge ODLIN: Exception.

Q. Please confine your answers to a concrete reply to the questions put to you; please state to the Court what conversations, if any, you had with Ricardo Regidor in reference to a check of 30,000 pesos given by Francisco Martinez?

A. I had been to see Mr. Regidor in order to clarify one entry in the account of the Bank and Don Francisco Martinez. This entry amounted to approximately 30,000 pesos. I do not care to state that was the exact amount. I spoke to Mr. Regidor with reference to this entry of Martinez in the Bank and he told me that these 30,000 pesos had been invested in paying the account of the Varadero for the repairs of one of the steamers of Francisco Martinez.

Q. Did you ever talk with Regidor about the entry of 9,000 pesos in the account of Francisco Martinez with the Bank and if so, state what he said to you about that entry?

A. Another entry in the account was an amount of some 7, 8 or 9,000 pesos. I spoke to Mr. Regidor about this matter and he also told me that with the check which figured in  
249 the account for this amount, there had been paid an account also of the Varadero for the repair of another ship.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

Redirect examination by Mr. GIBBS:

Q. Who came to your office with Francisco Martinez at the time you were employed to prosecute the appeal from the declaration of prodigality?

A. Isidro Martinez and Ramon Lontoc, these two persons came to serve as witnesses in certain affidavits which were to be presented in support of the appeal.

Mr. GIBBS: That is all.

J. DAXON, a witness for the defense, being duly sworn by the Court in English, testified as follows:

Direct Examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. J. Danon, commission merchant, 89 Calle Santa Potenciana.

Q. Do you know Francisco Martinez?

A. I do.

Q. Did you know Ricardo Regidor during his lifetime?

A. Yes, sir.

Q. Did you know Mr. Brown, the manager of the International Bank?

A. Yes, sir.

Q. Did you have any connection with any purchase of promissory notes for gambling of Francisco Martinez which were sold to the Bank?

A. I knew of a note of Francisco Martinez for 20,250 pesos I believe.

Q. Tell the Court what you know about that?

250 A. I do not remember the date when some Filipinos came over to my office and wanted to have some business done with the firm of Danon Brothers, of which I was a member; they wanted me to bring some goods from Paris to them and I asked them for security for a guarantee of the goods which I was to bring over and they turned over the pagare to me signed by Francisco Martinez, to the order of Don Juan de la Luz. I was told that Francisco Martinez had some money and his signature was good to the Bank. I went and saw Mr. Regidor, showed him the pagare of 20,250 pesos and he at once took the pagare to the Bank and opened me a credit on the International Bank.

Q. How much of a credit was opened in your favor by Regidor in the International Bank on account of that note?

A. I had some bills on the bank.

Q. Answer the question?

A. 1,000 pesos, I believe.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

Mr. GIBBS: I offer in evidence the document of the 12th of February, 1904, attached to the answer marked Exhibit "A" to show the fraudulent purpose and also to show the intention of the Bank in the execution of the document of the 15th of June, 1903, and for the

purpose of showing the allegation in the complaint that the defendant had committed a breach of the contract of the 15th of June, 1903, by refusing to carry out its terms is not true.

Judge ODLIN: The plaintiff objects to the document on the following grounds:—(1) because it has not been shown that this document was ever entered upon the books of the International Banking Corporation and on the contrary the evidence shows that such  
251 entry was never made; (2) there is no evidence that this document was ever accepted by the International Banking Corporation or ratified by them or any benefit derived by them thereunder or that the Bank as a corporation ever had any knowledge of the existence of this document; (3) because the document itself is of no effect legally, because executed by Francisco Martinez subsequent to the order of this Court dated in November, 1903, three months preceding; (4) because there is no evidence in this case showing that R. W. Brown, whose name appears in and by said document ever was authorized by the International Banking Corporation to bind it as a corporation by executing the document in question.

The COURT: This document according to the statement of counsel, could only be introduced for the purpose of showing that the International Banking Corporation, through Brown, was apprehensive that their security was not good and after Martinez was declared incompetent they sought to make their security better and for the purpose of showing the fraudulent purpose of the Bank and Regidor. Let the document be admitted for whatever it may be worth together with the other proof in the case.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 16, which is a copy of Exhibit "A" attached to the answer with one sheet, page 13, torn out; also Exhibits 13, 14, 15, 17, 18, 19, 20, 21, 22 and 23.

Judge ODLIN: Plaintiff's counsel objects to the introduction in evidence of all these exhibits upon the same four grounds as stated in the objection to the last offer, and upon the further ground, that  
252 this testimony, if genuine, shows that a criminal act was committed by R. W. Brown, and under no circumstances is a corporation liable for the criminal acts of its officers, employees or servants, unless it be shown that such corporation had knowledge of such crime or that such corporation ratified said crime or said Corporation derived some benefit from said crime, and none of those conditions have been shown to exist in this case.

Mr. GIBBS: These last named exhibits are all offered in connection with the testimony of witness Pedro Cantero, relative to the attempt to falsify the document of the 12th of February, 1904, so as to antedate it before the declaration of prodigality.

The COURT: Let them be admitted for whatever they may be worth, applicable to the issue.

Judge ODLIN: Exception.

Mr. GIBBS: We offer in evidence, Defendant's Exhibit 56, the partition proceedings of the property of Francisco Martinez y Ilustre estate in relation with the document upon which suit is

brought by plaintiff of the 15th of June, 1903, and the contract of the 12th of February, 1904, for the same reasons as stated relative to the others.

Judge ODLIN: No objection as to the first four pages of this exhibit which appear to be certified to by the deputy Clerk of this Court as a copy of a document duly presented to the Court and which the plaintiff admits is of record in this court, but the plaintiff objects to the balance of this document because the evidence shows that it never was presented to this Court, that it was an attempt or pretended attempt to carry out an order of this court which was never completed as a judicial act and therefore wholly incompetent as evidence in this case to bind the plaintiff.

253 Mr. GIBBS: There is a special reason in addition to the general one of fraud, and that is that these documents show that Azaola, one of the alleged conspirators, was acting as attorney for the International Bank.

Judge ODLIN: Even if Mr. Azaola was acting as attorney for the Bank and he started out to do something which he did not do, it would not be binding upon the Bank.

The COURT: In admitting the documents already admitted here or which may hereafter be admitted, the Court is not passing upon the liability of the Bank for Brown's conduct. That is a question to be determined to what extent the Bank may be liable for whatever misconduct is shown, if any, by the testimony in the case. The Court admits the document for whatever it may be worth in the case, if anything, in connection with the other testimony in the case; the document of itself cannot be of any effect.

Judge ODLIN: Exception.

Adjourned until 8:30 A. M., March 12, 1906.

Proceedings Held March 12, 1906.

Same appearances.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 1, being promissory note for 30,000 pesos made 23rd of January, 1903, signed by Francisco Martinez.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 2, being a rough draft of a letter -repared in the handwriting of Ricardo Regidor and directed to R. W. Brown, agent of the plaintiff corporation in reference to the opening of the current account of the defendant, Martinez, which rough draft was identified by the witness, Cantero.

54 Judge ODLIN: Plaintiff's counsel objects to the introduction of this document in evidence on the ground that it is not shown that same was ever delivered to the International Banking Corporation or to Mr. R. W. Brown, as agent or officer of said corporation and for that reason the rights of the Bank could in no wise be affected by the contents of this document.

The COURT: Let it be admitted for whatever it may be worth together with the other facts in the record.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 3, being power of attorney dated the 7th of February, signed by Francisco Martinez in favor of Don Pedro Cantero.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 4, being letter written in the handwriting of Ricardo Regidor and answered in the handwriting of R. W. Brown, relative to the arrangement of the books of the plaintiff Corporation covering certain promissory notes given.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 5, being a letter directed to the agent of the plaintiff Corporation dated April 2, 1903, signed by Francisco Martinez in reference to the disposition of certain promissory notes of 3,000 and 27,000 pesos each.

Judge ODLIN: Plaintiff's counsel objects to the introduction of the documents in evidence for the reason that it is not shown said letter was ever delivered to the International Banking Corporation, although signed by the defendant.

255 The COURT: Let it be admitted for what it may be worth and the Court will determine upon examination of the proof whether it is established the letter was delivered.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibits 6 and 7 which are the promissory notes referred to in Exhibit 5.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence, Exhibit 8 for the Defendants being letter directed by Francisco Martinez to R. W. Brown, as agent of the plaintiff corporation, dated the 2nd of May, 1903, sworn to.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 9, being letter directed by Francisco Martinez to Brown as agent of the plaintiff, dated April 21, 1903, in reference to the promissory notes of 80,000 and 30,000 pesos.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 10, being a document dated the 21st of April, 1903, addressed to Senor Brown and identified by the witness Cantero as having been a letter of instructions prepared and forwarded to Mr. Brown for his guidance in reference to the accounts of Martinez.

Judge ODLIN: There is not in the possession of the Bank any paper of which this purports to be a copy; we were called upon to produce the original of this letter and we say there is no original of this letter in the Bank and we object to the introduction of this,

unless such original was shown to be in the possession of the Bank; we object to the introduction of this Exhibit 10 for the reason that the defendant has not shown that this paper, or the original  
256 thereof or any duplicate thereof ever was in possession of the Bank.

The COURT: Let it be admitted for whatever it may be worth to be considered by the Court together with the other evidence.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Exhibit 11, being a duplicate of the document upon which case 3363 is based.

Mr. ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence, Defendant's Exhibit 12, being a statement on the typewriter of the disposition of the promissory note of 80,000 pesos proven to have been prepared by Regidor.

Judge ODLIN: Plaintiff objects to the introduction of this document in evidence on the ground that it appears on its face to be a copy. It is signed by nobody, addressed to nobody and there is no evidence that it ever was in possession of the International Banking Corporation.

The COURT: Let the document be admitted to be considered with the other evidence and the Court will determine what weight, if any, it has and whether or not it went into the hands of the plaintiff Bank.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 24, being a receipt given by Regidor to defendant Francisco Martinez dated June 21, 1903, for the check of 30,000 pesos.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibits 25  
257 and 26, being two promissory notes each dated April 6, 1903, for 16,000 pesos and 8,000 pesos respectively, appearing to have been signed by Francisco Martinez in favor of Don Ramon Mascunana and various endorsements, discounted by the plaintiff corporation.

Plaintiff's counsel does not object to the admission of the note for 16,000 pesos in evidence, which is marked Defendant's Exhibit 25, but plaintiff's counsel does object to the admission of the note of 8,000 pesos marked Defendant's Exhibit 26, for the reason that it is not shown that said note ever was in the possession of the International Banking Corporation.

The COURT: Let the documents be admitted for whatever they may be worth in connection with the proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Defendant's Exhibits 27, 28, 29, 30, 31 and 32, consisting of checks and deposit slips drawn on the current account of Pedro Cantero in the Bank of the plaintiff corporation.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 33, being the pass-book of the account current of Pedro Cantero.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, 50 checks which entered into the account current of Pedro Cantero, the first one of which dated June 2, 1903, is marked Defendant's Exhibit 34 and in which package are also included Exhibits 79 and 80 specially of the Defendant.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence Exhibits 37 and 38 being record of protest of a promissory note given by Francisco Martinez to Don Manuel Ramirez, one for 4,000 pesos and the other 3,000 pesos, respectively.

Judge ODLIN: Plaintiff's counsel objects to the introduction in evidence of the document marked Defendant's Exhibit 37 and 38, for the reason that it has not been shown that the International Banking Corporation ever had anything to do with either of said documents.

The COURT: Let the documents be admitted for whatever they may be worth, to be considered with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibits 39, 40 and 41, being letters directed in the handwriting of Manuel Ramirez to Don Ricardo Regidor, relative to the defendant, Francisco Martinez.

Judge ODLIN: Plaintiff's counsel objects to the introduction of these documents for the reason that the correspondence between Ramirez and Regidor is not competent to bind the International Banking Corporation, it not being shown that Ramirez, the supposed writer of the letters, ever had any connection with the Bank and on the further ground that it has not been shown that the International Banking Corporation ever had any knowledge of the existence of that correspondence or that it could in any way bind the International Banking Corporation.

The COURT: Let them be admitted for whatever they may be worth.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibits 42, 43 44 and 45, consisting of letters directed by Ramon Lontoc and Julio Duenas, Defendant's Exhibit 42, being in the handwriting and signed by Ramon Lontoc.

Judge ODLIN: I object to the introduction of these exhibits on the grounds that it has not been shown that the writers of said document was in any way connected with the International Banking Corporation that said letters were not addressed to said International Banking Corporation its employees, agents or servants or that said correspondence or any part thereof ever was in the possession of the International Banking Corporation and therefore the plaintiff could in no way be bound by the contents of said documents.



The COURT: Let them be admitted for whatever they may be worth.

Judge ODLIN: Exception.

Mr. GIBBS: We offer in evidence, Defendant's Exhibit 46 signed by Francisco Martinez, being a power of attorney and dated the 12th of February, 1904, in favor of Robert W. Brown, agent of the International Bank.

Judge ODLIN: Objected to for the reason that this document on its face purports to be executed by Martinez after the guardian had been appointed for him and the International Banking Corporation could not be bound by the act of R. W. Brown, director in contravention of law and in contempt of this court, it not being shown that plaintiff ever ratified the action of said Brown in making himself a party to that document or that the same was ratified by the Corporation and that such action was clearly outside his duties and the Bank could not be bound thereby in the absence of ratification or knowledge.

The COURT: Let it be filed; the legal effect of the document will be considered by the Court.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Exhibits 47, 48, 49, 50, 51 and 52, purporting to be letters amongst the co-conspirators relative to the defendant, Martinez.

Judge ODLIN: Objected to for the reason that they appears to be signed by one, Duenas, another by one, Ramon Lontoe, another by Duenas, another without signature, all of said documents being addressed to Pedro Cantero and it not being shown that any of these documents were ever in the possession of the International Banking Corporation or that said Corporation ever had any knowledge of the existence of these documents and therefore could not in any way be bound by their conduct.

The COURT: Let them be admitted for whatever they may be worth in connection with the other proof.

Judge ODLIN: Exception.

Adjourned until 2:30 P. M.

Same appearances at 2:30 P. M.

Mr. GIBBS: I offer in evidence Defendant's Exhibits 53, 54 and 55, being letters referring to the 20,250 pesos pagare.

Judge ODLIN: No objection to Exhibit 54 but object to 53 and 55 for the reason that it is not shown that they were ever in the possession of the plaintiff Corporation and are not signed by or addressed to any person connected with the Bank.

The COURT: Let them be admitted for whatever they may be worth.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Exhibit 57 for the Defendant, being a petition to the registrar of property to register certain titled to properties of Francisco Martinez, signed by R. W. Brown as agent of the plaintiff Corporation.

Judge ODLIN: No objection.



The COURT: Let it be admitted.

261 Mr. GIBBS: I offer in evidence Defendant's Exhibit 58 and 59, being copy of a letter dated the 12th of February, 1903, directed to R. W. Brown, signed by Regidor, together with the envelope in which same was remitted to R. W. Brown and his initials upon the envelope.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 60, being a rough draft of a letter written in the handwriting of Ricardo Regidor in reference to the property of the defendant, Martinez.

Judge ODLIN: I object to this letter (1) because an inspection of the letter shows that it was written after the appointment of Mr. Cohn as guardian, his name being mentioned therein; (2) because it is addressed to Messrs. Armstrong & Mackey, who are not shown to have any connection whatever with the International Banking Corporation; (3) because there is no evidence in this case that the International Banking Corporation ever had any knowledge of the existence of this letter and in no way can be bound by the document.

The COURT: Let it be admitted for whatever it may be worth to be considered with the other proof.

Judge ODLIN: Exception.

(Exhibit 61 is not offered.)

Mr. GIBBS: I offer in evidence Defendant's Exhibit 62, being a rough draft of a letter addressed to R. W. Brown in the handwriting of Regidor.

Judge ODLIN: Objected to on the ground that it is not proven that R. W. Brown ever received the letter.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

262 Mr. GIBBS: Offer in evidence Defendant's Exhibits 63, 64 and 65.

Judge ODLIN: No objections.

The COURT: Let them be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibits 66, 67, 68 and 69, being documents acknowledged by the notary public Vicente G. Azaola and witnessed in blank with reference to a fictitious redemption of the Gregorio Legaspi sale with right of redemption.

Judge ODLIN: Objected to on the ground that it has not been shown that the Bank was in any way concerned with the same or consented to or authorized their execution.

The COURT: Let them be admitted for whatever they may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: Offer in evidence Defendant's Exhibit 70, purporting to be a rough draft of an affidavit prepared in the handwriting of Ricardo Regidor with reference to two checks signed by Francisco Martinez and with reference to the 9,000 pesos represented by the

check given by Martinez to Regidor for the purpose of redeeming the Legaspi loan of the property encumbered to Legaspi.

Judge ODLIN: Objected to on the ground that it is not shown same was ever executed by anybody or that if executed, the International Banking Corporation ever had any knowledge of its contents or its existence.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

263 Mr. GIBBS: Offer in evidence Defendant's Exhibit 71, being letter signed by Ricardo Regidor directed to the International Banking Corporation, bearing date July 2, 1903 also with reference to the 9,000 peso obligation to Legaspi.

Judge ODLIN: Objected to on the ground that it is not shown that same was ever delivered to the Bank or that the Bank had any knowledge thereof.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 72, purporting to be a notarial demand for the delivery of certain property alleged to have been encumbered or sold to the plaintiff Bank with right to redeem, signed in blank by Brown and Martinez.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 73, being power of attorney executed by Francisco Martinez in favor of R. W. Brown as the agent of the International Banking Corporation on the 15th of July, 1903, authorizing the collection of certain rents alleged to have been due from the Quartermaster.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 74, consisting of three sheets and purporting to be a rough draft, partially in the handwriting of Regidor and partially in typewriting, relative to the transfer by Francisco Martinez to Pedro Martinez of one-half of certain properties belonging to the Martinez-Ilustre estate.

264 Judge ODLIN: Plaintiff's counsel objects to these papers on the ground that it has not been shown same were ever in the possession of the Bank or that the Bank ever had any knowledge of their contents or existence.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 75, being a sale with right to redeem of certain properties, executed by Francisco Martinez in favor of the plaintiff corporation on the 12th of February, 1903.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 76, purporting to be a statement of the various obligations of the credit extended

to Francisco Martinez and which Cantero said was upon the instructions of Brown.

Judge ODLIN: Objected to as not being addressed to anybody, signed by nobody and there is no evidence in the case that same was ever in the possession of the Bank or that the Bank ever had any knowledge of its contents or existence.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 77, consisting of ten pages of typewritten matter.

Judge ODLIN: Objected to upon the ground that it purports to be a statement made by R. W. Brown, agent of the International Banking Corporation as to certain acts done by him in accordance with the decree of this Court dated 15th of June, 1903, in the matter of the partition between Francisco Martinez and his son, Pedro, but it nowhere appears that this document was ever signed by any person. The signature of no person appears in the document and there is no evidence in the case that same was ever in the possession of the Bank or any of its agents or that the Bank ever had any knowledge of its contents or existence and that even if the Bank had such knowledge, it would not bind the Bank because it is not executed by anybody.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 78, consisting of five pages, the first page being letter from Enrique F. Somes, directed to Brown as Director of the International Bank, dated, Manila, 1903, relative to promissory note of 14,000 pesos; the other four pages being a protest which was never executed.

Judge ODLIN: Objected to for the reason that there is no evidence in this case that they were ever in the possession of the Bank or that the Bank ever had any knowledge of their existence or contents and on the further ground that it is not pretended, alleged or proven by the defendants in this case that the signer of this letter, Enrique F. Somes, ever had any connection with the Bank or is his name among the alleged conspirators referred to in the amended answer filed in this case.

The COURT: Let the document be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

266 (79 and 80 are already introduced.)

Mr. GIBBS: I offer in evidence Defendant's Exhibit 81 and 82, being the stubs of checks Nos. 27285 and 27288 of the stub-book of Pedro Cantero.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibits 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92, being checks of Francisco Martinez bearing the numbers 24,038, 24,039, 24,029, 24,016, 24,002, 24,011, 24,026, 24,043, 17,852-S 24,037.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: I offer in evidence Defendant's Exhibit 93, being promissory note dated 15th of September, 1903, payable to the order of the Chino, Sy Chuy Chim, for 5,868.97, signed by Francisco Martinez.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I offer in evidence, Defendant's Exhibit 94, purporting to be a letter addressed to the agent of the International Bank and signed by Francisco Martinez relative to the promissory note of 30,000 pesos, signature being torn off with the exception of the letter "F".

The plaintiff's counsel objects to this offer as the instrument has no date and no proof that it was ever in the possession of the plaintiff Bank and on the further ground that it is not shown in this case whether the signature was removed before or after the supposed delivery of the letter.

The COURT: Let it be admitted for whatever it may be worth in connection with the other proof.

Judge ODLIN: Exception.

267 Mr. GIBBS: Offer in evidence Defendant's Exhibit 95, being letter of Francisco Martinez to Brown dated January 30, 1903.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibits 96 and 97 consisting of promissory note of 80,000 pesos and letter of Martinez to the Agent of the Bank with reference thereto, dated February 2, 1903.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibits 98, 99 and 100, purporting to be memorandum relative to the outstanding pagares against Francisco Martinez.

Judge ODLIN: Objected to, it not being shown in whose handwriting the documents are made or that the same were ever in the possession of the plaintiff or that the plaintiff ever had any knowledge thereof.

The COURT: Let them be admitted for whatever they may be worth in connection with the other proof.

Judge ODLIN: Exception.

Mr. GIBBS: Offer in evidence Defendant's Exhibit 101, being a notarial demand for the delivery of the possession of certain property dated 23rd of May, 1903, alleged to have been encumbered to the Bank by Martinez, said document being signed by Brown, Martinez, Vicente G. Azaola and Lorenzo del Rosario.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibit 102, consist-

ing of a memorandum written in the handwriting of Brown and the envelope thereof addressed to Senor Cantero.

268 Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibit 103, being a letter the first part of which is in the handwriting of Ricardo Regidor and the latter part and answer thereto in the handwriting of Brown, together with the envelope directed to Brown and acknowledged receipt by Brown on such envelope.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence Defendant's Exhibit 104, consisting of letter, the first part of which is written by Cantero and the latter half by Brown.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence, Defendant's Exhibits 105, 106 and 107, being three memorandum letters in the handwriting of Brown.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: I will not offer Exhibit 108. But I offer Defendant's Exhibits 109 to 123, inclusive, being notarial documents purporting to convey various properties from Francisco Martinez to the Bank.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

Mr. GIBBS: Offer in evidence, Defendant's Exhibits 124, 125 and 126, being checks of Francisco Martinez Nos. 24014, 24013 and 24024, respectively.

Judge ODLIN: No objection.

The COURT: Let them be admitted.

269 Mr. GIBBS: Offer in evidence the deposit book of Pedro Cantero as Defendant's Exhibit 127.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Mr. GIBBS: Offer in evidence the power of attorney of the plaintiff Bank to Mr. R. W. Brown, as Defendant's Exhibit 128.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

Judge ODLIN: In response to the request of counsel for the defendants that the plaintiff furnish a statement as to the income and disbursements from the realty in the possession of the Bank which is involved in this litigation, the same covering the months of January, February 1906, the plaintiff submits the following statement which the defendants' counsel admits shall have the same effect as if testified to by Mr. Taylor under oath, he having prepared it. This statement, not only covers the income and disbursements for the months of January and February, 1906, but also for the first twelve days of March, 1906; in other words it is brought down to the present date.

As to the real property in the possession of the Bank, the total amount received during the time stated, 2,268 pesos making a total

of 20,677.41 pesos; total receipts since the first possession taken by the Bank up to the present time; the total amount disbursed upon this real estate between January 1, 1906, to March 12, 1906, is 2,522.99, making a total amount of disbursements upon said real estate for the time the Bank first took possession up to the present date of 13,835.09 pesos, including the general expenses, making the net amount received by the Bank during the entire period 6,842.32 pesos.

With respect to the steamer "Germana" the total amount received is 1830 pesos and the total amount disbursed is 7,962.36, leaving an overdraft as regards the steamer "Germana" of 6,132.36 pesos.

It is further admitted that none of these items referred to in this stipulation have been paid to the defendant, Francisco Martinez, or to his legal representative.

It is also admitted that these transactions regarding the income and disbursements of the real estate have been carried by the Bank as a special account and the proceeds have not been credited to the account of Francisco Martinez on the books of the Bank, nor have the disbursements been charged against the account of Francisco Martinez.

It is admitted that Mr. R. W. Brown was the manager of the International Bank during the year 1903.

In regard to the deposition of Francisco Rodriguez it is agreed that the same may be admitted, subject to exceptions on part of the plaintiff to such portions thereof as are incompetent by reason of being hearsay and other rules of evidence and as to the parts that are competent, they shall have the same weight as though said witness testified thereto from the witness stand, said witness being ill.

And it is further agreed that said witness on cross-examination would testify that he was a creditor of Francisco Martinez, that he held a promissory note signed by said Francisco Martinez for the sum of 4,000 pesos; that he employed the firm of Pillsbury & Sutro to collect said promissory note; that said firm of Pillsbury & Sutro brought suit for the debt of Francisco Rodriguez against Francisco Martinez in the Court of First Instance of the City of Manila, that an appeal was taken to the Supreme Court of the Philippine Islands and that toward the latter part of the year 19— judgment was rendered by the Supreme Court of the Philippine Islands in favor of the witness, Francisco Rodriguez and against Francisco Martinez; that soon thereafter the witness, Francisco Rodriguez, frequently visited the office of Kinney, Odlin & Lawrence, successors to Pillsbury & Sutro, urging them to enforce the payment of said judgment; that said Kinney, Odlin & Lawrence made every effort to do so and failed; that Francisco Rodriguez became dissatisfied at the inability of Kinney, Odlin & Lawrence to enforce the payment of said judgment and he asked them if they were not counsel for the International Banking Corporation whose claim against Martinez was much larger than his own and they replied that was true and that he knew such was a fact when he employed the former firm of Pillsbury & Sutro, and he was furthermore informed by Kinney, Odlin & Lawrence that if he was dissatisfied with the manner in

which they were conducting the business entrusted to them by him, that they would desire that he take the case to some other lawyer and that he pay them nothing he having previously paid them nothing. That he did as suggested and that the matter was withdrawn from the firm of Kinney, Odlin & Lawrence and afterwards placed in the hands of Messrs. Gibbs, Gale & Carr.

HERBERT D. GALE, a witness for the defendants, being duly sworn by the Court in English, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Herbert D. Gale, attorney at law, live in Manila.

Q. Referring to the various exhibits and documents which have been offered in evidence bearing date July 8, 1904, with your initials, the initials of T. C. Kinney and those of Vicente Gallegos, please state to the Court under what circumstances those documents were endorsed by you, Mr. Kinney and Mr. Gallegos? And in what capacity were you acting?

A. At that time I was Assistant Prosecuting Attorney for the City of Manila, and was engaged in certain investigations with Mr. Kinney. Martinez Gallegos and Mr. Kinney came to the office on either the afternoon of July 7th or morning of July 8th and informed me that Mr. Gallegos in leaving the house of Ricardo Regidor and Pedro Cantero had taken a trunk which contained a large number of papers concerning transactions with the International Bank and I ordered Gallegos to bring the trunk to the office of the Prosecuting Attorney where it was opened and the contents which consisted of a large number of documents and papers, letters and notes were taken from the trunk in the presence of Mr. Kinney, Mr. Gallegos and myself and were initialed, each document was initialed by each of the three persons named and retained in the office of the Prosecuting Attorney until about two weeks ago when they were delivered to me by the Acting Prosecuting Attorney.

273 Q. You have referred to an investigation that you were conducting; what was your investigation, without stating what resulted?

A. It was an investigation into alleged frauds of R. W. Brown Ricardo Regidor, Vicente G. Azaola and a large number of other persons who were supposed to be connected with them.

Q. Frauds purpo-ting to have been perpetrated against whom?

A. Against a chinaman by the name of Sy Chuy Chim, against Francisco Martinez and against the International Bank.

Q. When was that investigation begun?

A. In the early part of February, 1904, about February 1, 1904.

Q. Was there an investigation conducted in your office as Prosecuting Attorney with reference to the mental capacity of the defendant, Francisco Martinez?

A. Yes, sir.

Q. About when was that investigation begun?

A. In May, 1903.



Q. Is the T. C. Kinney, whose initials appear on all those documents the same T. C. Kinney who is representing the plaintiff Bank in this case and was representing the plaintiff corporation at that time?

A. Yes, sir, Mr. Kinney is a member of the Firm of Kinney, Odlin & Lawrence, formerly Pillsbury & Sutro, and is the same person.

Q. And was representing the Bank at the time those documents were initialed?

A. Yes, sir.

Q. State to the Court whether he examined all those documents along with you at the time they were initialed?

274 A. Yes, sir, all of the documents were examined, but as to a large number of them, only a cursory examination was made.

Mr. GIBBS: That is all.

#### Cross-examination by JUDGE ODLIN:

Q. Do you know where Ricardo Regidor is now, Mr. Gale?

A. Dead.

Q. About when did he die?

A. I think he died in July, 1905, I am not sure.

Q. Do you know whether he left a will or not?

A. No, sir, I do not.

Q. Do you know whether anybody has been appointed administrator or administratrix of his estate?

A. I know generally that his wife, Caridad Muguruza, is administratrix; I have seen her name signed as such.

Q. Do you know whether she has a suit pending against the International Banking Corporation in part two of this Court growing out of transactions between her deceased husband and said Bank?

Mr. GIBBS: Objected to as immaterial and not proper cross-examination.

The COURT: Why do you ask it?

Judge ODLIN: To show the witness' interest. I propose to show that Mr. Gale, if I can, is acting as attorney for the estate of Regidor in attempting to establish a claim against the International Banking Corporation and he in this case appears and presents a defense which would absolutely ruin the estate of Ricardo Regidor, if true and I have a right to show it, to show the interest of the witness.

75 The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. Yes, sir, I know there is such a suit pending.

Q. Who are attorneys for the plaintiff in that suit, if you know?

A. Mr. A. D. Gibbs.

Q. Anybody else represent the plaintiff?

A. Not that I know of.

Q. You have not taken part in that trial at all?

A. No, sir.



Q. Signed none of the papers in the case?

A. Not that I know of; if any have been signed by me it has been some matter of insignificance, as the service of papers or something of that kind.

Q. Can you state about the date that suit was started?

A. No, sir.

Q. Are you familiar with that case enough to state whether the suit was begun in the lifetime of Ricardo Regidor and then revived by the widow herself?

A. I do not know, but my impression is that it was pending at the time Ricardo Regidor was living, I do not know. The record will show that. I would like to state, if the Court will permit me to make a statement in relation to the matter, and that is that I formed a partnership with Mr. Gibbs in April, 1905; previous to that time I had been Assistant Prosecuting Attorney and under the partnership arrangements between Mr. Gibbs and myself, it was specially understood that I was to take no part whatever in the litigation between the casa Comisin and Ricardo Regidor against the International Bank, because of the fact that I had  
276 been engaged in certain investigations in connection with that matter in which I might be in a position to have information from the Bank or from other parties which would disqualify me as an attorney and I never have discussed the cases or the evidence and proof in those cases with Mr. Gibbs.

Q. That understanding does not prevent you from taking part in litigation between the International Banking Corporation and Martinez?

A. No, sir, there was no reason why I should not take part in them and I will say further that I did not take part in that litigation until I had talked about the matter with the representatives of the Bank and they stated they had no objections, whatever, and could see no objection to my taking part in that litigation. They also said they did not see any objection to my taking part in the Casa Comision litigation if I wanted to.

Q. You say that this investigation you have testified to as having taken place in the office of the Prosecuting Attorney with which office you were officially connected at that time concerning alleged frauds perpetrated upon the chinaman, Sy Chuy Chim, Francisco Martine, the International Banking Corporation and other persons do I understand you correctly?

A. I think I confined it to those three, I think there were one or two other minor matters but I do not recall them distinctly now.

Q. At the time that investigation was going on, do you know who the manager of the International Banking Corporation was?

A. At the time the investigation commenced Mr. Brown was manager but during the time the investigation was going  
277 on it covered several months, he was discharged.

Q. At the time that you and Mr. Kinney and Mr. Gallegos went through that bunch of documents, do I understand you to say it was in July, 1904?

A. I think July 8th, that is the date the initialing bears I think.

Q. That was your first knowledge of the existence of those documents when you put your initials on them?

A. Well as to some of them, that would be true, and as to some, not true.

Q. Was that the first time you saw those documents?

A. Yes, sir.

Q. At that time he was manager of the International Banking Corporation?

A. I cannot say, I do not remember whether it was about that time.

Q. If you should hear the name would you be able to recall it?

A. It was, I think, Captain Palmer at that time.

Q. Was not Palmer under A. B. Bullen?

A. No, I think it was the reverse, I think Bullen was under Captain Palmer.

Q. Don't you know that Mr. A. P. Bullen signed all documents at that time for the Bank?

A. I believe Mr. Bullen—I do not remember I cannot say about that, there was a bunch of managers in the Bank.

Q. Did you know A. P. Bullen personally?

A. Yes, sir.

Q. And Captain C. P. Palmer, personally?

A. Yes, sir, for a number of years.

278 Q. Did you know that at that time they were at the head of the affairs of the Bank either jointly or severally?

Mr. GIBBS: Objected to as immaterial and not the best evidence and improper cross-examination.

Judge ODLIN: It is competent to show this gentleman who was representing the Prosecuting Attorney and show what — attitude of the managers of the Bank was at that time towards that investigation or whether it was immediately after, I cannot say the exact time.

The COURT: Objection overruled.

A. I know that about that time Mr. Bullen was made a manager and that Captain Palmer was here in Manila in charge of the affairs of the Bank as assistant to the President of the Bank, but I cannot say whether Mr. Brown had been superseded by Bullen at that time or whether it was immediately after, I cannot say the exact time.

Q. Do you know whether Mr. Brown was in the City of Manila at the time?

A. Yes, sir, he was.

Q. Did Mr. Bullen or Mr. Palmer take part in the investigation in any way, directly or indirectly?

A. Mr. Palmer, yes, sir. Mr. Bullen, no.

Q. What was Mr. Palmer's attitude towards that investigation?

A. He assisted the investigation, certainly.

Q. What was Mr. Kinney's attitude in regard to that investigation?

A. Same as Captain Palmer and he gave me more assistance than Captain Palmer, more active assistance.

Q. You met with no obstructions from either gentleman?

A. No, sir.

Q. And Mr. Brown was in Manila but not connected with the Bank?

A. I cannot say on July 8th.

279 Q. Your best recollection?

A. I cannot say, I know that for a long time while the investigation was going on he was in the Bank and it went on a good while after he was out of the Bank and I cannot say in the middle of the year 1904, but I cannot say the date.

Q. I will call your attention to a petition dated August 23, 1905, in case No. 3158 in which Ricardo Regidor who had died a short time previous thereto, was plaintiff and the International Banking Corporation was defendant and in which petition the widow of Regidor appears, and ask you if you know who receipted for this paper as representing the International Bank?

A. Pillsbury & Sutro.

Q. Do you recognize the writing?

A. I think it is Mr. Kinney's, but I would not be sure no, I think it is yours.

Q. Who appears there as attorney for the widow?

A. Gibbs & Gale appear here, but it is not signed by either Gibbs or Gale.

Q. Who signed it there?

A. Mr. Gibbs, it is inadvertance that my name appears.

Q. Calling your attention to paper presented in this case on September 6th, 1905, which is a notice to the firm of Pillsbury & Sutro as to the presentation of said petition and ask you if you know who, receipts for the copy of that notice?

A. That is Pillsbury & Sutro and Judge Odlin's handwriting.

Q. And whose name appears there as attorney for the widow?

A. Gibbs & Gale in Mr. Gibbs' handwriting.

Q. You testified that an examination began in the office of the Prosecuting Attorney of Manila in May, 1903, concerning the mental capacity of Francisco Martinez?

280 A. Yes, sir.

Q. At whose request was that investigation begun?

A. Early & White.

Q. How long did that examination continue?

A. About three or four days.

Q. Do you recall that during the time you were connected with the office of the Prosecuting Attorney that a petition was presented to the Court by the attorney, Don Francisco Ortigas in connection with that same matter, which petition has been testified to in this case?

A. Yes, sir, I know there was such a petition filed.

Q. Did the Prosecuting Attorney's office intervene in that matter?

A. No, sir, I did not. I did not have knowledge of it at that time. I think the petition was filed by Mr. Smith, I do not know. I did not know there had been a previous petition, did not know that Mr. Ortigas had filed a previous petition.

Q. The one filed by Mr. Smith was I think distinct and separate from the Ortigas proceeding?

A. Yes, sir.

Q. And the petition of Mr. Smith was not filed until along in November of that year?

A. Somewhere between the 5th and 10th of November, I think.

Q. Was that petition filed by your superior officer Mr. Charles Smith early in the month of November, 1903, entirely distinct and separate from the Ortigas proceeding?

A. Entirely.

Q. Were you present during all the testimony that was taken before his Honor, Judge Sweeney, in connection with that matter?

A. Yes, sir.

1 Q. Don Francisco Martinez testified in that case as a witness?

A. Yes, sir, and I examined the witnesses for the Government.

Judge ODLIN: That is all.

It is agreed that there — in the possession of the plaintiff six documents, all being deeds with right of repurchase, covering the property on Calle Lavizares, two properties on Calle Barcelona, Calle Principe, Calle Sevilla, Calle Penarubia, being dated respectively, February 13, 1903, for the consideration of 1700 pesos; March 23, 1903, for the sum of 1400 pesos.

The third bears date 13th of February, 1903, expresses a consideration of 5800 pesos and the property being Calle Barcelona.

The fourth bears dated the 23rd of March, 1903, consideration the sum of 600 pesos, property is Calle Principe.

The fifth document bears date the 23rd of March, 1903, consideration 1500 pesos, property in Calle Sevilla.

The sixth document bears date 23rd of March, 1903, consideration 1600 pesos, property on Calle Penarubia.

All of said documents being executed by Francisco Martinez and accepted by R. W. Brown in writing on behalf of the plaintiff Bank and all celebrated before Vicente G. Azaola, notary public and witnessed by Jose Gervacio Garcia and Gregorio Ramos, all except one which is witnessed by Gregorio Ramos and Martin Sandoval.

Judge ODLIN: Plaintiff offers in evidence a document which bears date the 25th of January, 1904, executed by one, Cirilo David with the Casa Comision and is the acknowledgment of receipt by David from the Casa Comision of 14,000 pesos, which was due said David from Francisco Martinez; and another document bearing date of the 26th of January, 1904, between the Casa Comision and Vicente G. Azaola representing it, and the Bank, represented by R. W. Brown, in which the Casa Comision transferred to the Bank the rights acquired by the former document between the Casa Comision and David, for the consideration of \$52.20 pesos received by the Casa Comision from the Bank.

Mr. GIBBS: What is the purpose?

Judge ODLIN: To show that the property on Calle Elcano the interest of the Bank in that property came honestly and not wrong-

fully as you allege. It is to rebut what the defendants claim is evidence of fraud. But I will withdraw them for the time being. I have no objection to the other six documents offered by defendant.

The COURT: Let the six documents be admitted.

Adjourned until 8 A. M.

Proceedings Held March 13, 1906.

Same appearances.

CHARLES C. COHN, a witness for the defendant, being duly sworn by the Court in English, testified as follows:

Direct examination by Mr. GALE:

Q. What is your name, residence and occupation?

A. Charles C. Cohn, attorney at law, live in Manila.

Q. I will ask you to state whether or not you were formerly the guardian of Francisco Martinez, an incompetent person, the  
283 defendant in this case?

A. I was, from the 18th of November, 1903, until the 31st of December, 1905.

Q. The plaintiff, the International Banking Corporation, has rendered a statement which has been admitted as evidence in the case by which it is claimed that the Bank made an expenditure of 21,797.45 in connection with the real property and steamer "Germana" which properties and steamer were administered by the Bank from about the 4th of September, 1903, down to the present date. I will ask you to state whether or not as guardian of Francisco Martinez you were consulted in any way concerning these expenditures?

Judge ODLIN: Objected to unless it is stated in the question that the Bank's possession of the steamer preceeded by several months, the date of December, 1903.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. I was never consulted.

Q. I will ask you to state whether or not you at any time authorized the plaintiff Bank or any representative of such Bank or consented to the expenditure by the Bank of the sum of money of which mentioned was made in the previous question?

A. No, sir, never.

Q. I will ask you to state whether or not as guardian you administered any of the real properties of your ward Francisco Martinez, situated in the City of Manila?

A. I did, as many as I could reduce to my possession as such guardian.

284 Q. Do you remember how many separate pieces of property you administered?

A. I think there were some six separate pieces of property they

were tenement houses all of them however and were sublet to a great number of tenants so I could not be positive about the number of separate pieces.

Q. State what the approximate income was from those six pieces of real property *was* more or less, during the time that you administered them?

A. The gross income was about 15,000 pesos.

Q. State what was the approximate amount of expenditures made by you on account of these properties, including taxes and insurance?

A. About 5,000 pesos.

Q. You mentioned in one of your answers of administering all of the properties that you were able to obtain possession of; will you relate briefly the history of the taking possession of the property and attempts to get possession of the balance of the property; what you did and what occurred and what prevented you from taking possession of the balance?

A. When I was appointed guardian in November, 1903, the first few days were consumed in qualifying and preparing bond and informing myself of the condition of the property, with which I was at the time wholly unfamiliar and as soon as that was done I visited all the properties all of which were sublet in small holdings to tenants and interviewed all of the tenants formally in writing of my appointment as the guardian of Francisco Martinez explaining to all of them that no one was entitled to administer the properties except myself; that no one was entitled to lease them or collect rents for them, except myself and that Francisco Martinez had no power to make contracts of any kind, except through my intervention, that is, through me. I found, however, on going around that all, or nearly all of the tenants had previously been visited by a representative of the International Bank and that they had not been notified that the properties were mortgaged to the Bank and that the Bank claimed the right to administer them, that is to say, lease them and collect the rents for them. Many of the tenants, at least half of them, had either paid rents already to the International Bank or had agreed with the Bank's representative to pay the Bank; in making the collections on the first of the succeeding month I was only able to collect rents for about one-half of the tenants and the other half refused to pay the rents to me or display receipts where they had already paid rents to the International Bank. The necessary complaints were made at once by me to enjoin the International Bank from interfering with my duties as guardian and from any attempts to collect rents or administer the property, but before these complaints could be filed, my status of guardian was jeopardized and my authority very much curtailed by a mandamus proceeding commenced in the Supreme Court by Francisco Martinez or others on his behalf, enjoining me from doing anything except collect such money as I could and deposit it in the Bank. That injunction lasted until late in the year 1905, and as I interpreted that injunction I was powerless to take any further steps towards reducing those properties to my possession.

Mr. GALE: That is all.

286 Cross-examination by Judge ODLIN:

Q. As guardian of Francisco Martinez you never had anything to do with the steamer "Germana" did you?

A. No, sir.

Q. You never made any attempt to get possession of that steamer?

A. I made attempts to this extent; I called upon Messrs. Armstrong & Mackay, ship brokers and asked them to take charge of that steamer and to operate her as ship brokers for and on account of myself as guardian and they agreed to do this, but subsequently reported to me that the vessel was in possession of the International Bank and it was necessary to sue them to get possession and by the time that information came to me, I was rendered powerless by the injunction to which I have already referred.

Q. State whom you employed, if anybody, to collect the rents of the buildings of which you were in possession?

A. I collected them myself for the first eighteen months of my guardianship and during the last six months I employed Joseph N. Wolfson.

Q. Do you know whom the International Bank employed to collect the rents of the property of which they were in possession?

A. They had also employed Joseph N. Wolfson.

Judge ODLIN: That is all.

Redirect examination by Mr. GALE:

Q. Mr. Wolfson reported to you and paid over the amounts collected?

A. Yes, sir, immediately and there was some reluctance on my part to employ him; he had very earnestly solicited the employment and there was some reluctance to employing him because he represented the International Bank but there was an express and explicit agreement in writing made by him to me that there should be no confusion in his duties and he was to collect the rents of the properties in my possession as my agent and report promptly, which he invariably did, at the close of each month.

Mr. GALE: That is all.

Cross-examination by Judge ODLIN:

Q. I understood you to say that agreement between you and Mr. Wolfson was strictly observed by him?

A. Yes, sir.

Judge ODLIN: Exception.

LORENZO DEL ROSARIO, a witness for the defendants, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Mr. GIBBS:

Q. What is your name, residence and occupation?

A. Lorenzo del Rosario, merchant, Calle Madrid No. 180.

Q. I call your attention to Exhibits 25 and 26 of the defendant being two promissory notes each dated April 6, 1903, for 16,000



and 8,000 pesos respectively, and ask you to state whether or not that is your signature to the endorsement in favor of the International Bank?

A. Yes, sir it is.

288 Q. State the circumstances under which you endorsed those promissory notes to the Bank?

A. I remember that Mr. Regidor asked me as a favor that these pagares should be endorsed to me and that I should then endorse them to the Bank.

Judge ODLIN: Plaintiff's counsel objects to any evidence concerning Defendant's Exhibits 26, being the note of 8,000 pesos, because it does not appear that said note ever passed through the International Banking Corporation; with respect to No. 25, for 16,000 pesos, there is no objection to the question.

The COURT: The Court overrules the motion, but will consider the testimony with the other testimony and determine whether this note had any connection with the Bank.

Judge ODLIN: Exception.

Q. Did you have any other operations with the Bank in which Regidor intervened?

A. Yes, sir, at first operations with the Bank through Regidor; this transaction arose subsequently.

Q. State what those operations were in general?

A. The first operation of 10,000 pesos as I remember it which I made through Regidor, when Mr. Regidor told me I could make the operation I went to see Mr. Brown at the Bank and Mr. Brown then intervened and granted the operation of 10,000 pesos and Mr. Regidor prepared the escritura of mortgage on some property from myself in favor of the Bank and Mr. Regidor did not demand anything else from me than a present.

Q. Did you secure any other loan from the Bank by the intervention of Regidor?

289 A. Yes, sir, another of 15,000 pesos, if I remember correctly over property of Gregorio Revita Santos with my signature.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

FRANCISCO MARTINEZ, the defendant, being duly sworn by the Court through the office interpreter, Villareal, in Tagalog, testified as follows:

Direct examination by Mr. GALE:

Q. What is your name, residence and occupation, and age?

A. Francisco Martinez, merchant; 67 years of age; Calle Lavizares No. 66.

Q. Do you know R. W. Brown formerly manager of the plaintiff corporation?

A. Yes, sir.



Q. Did you know Vicente G. Azaola in his lifetime?

A. Yes, sir.

Q. Do you know Pedro Cantero?

A. Yes, sir.

Q. Do you know Ricardo Regidor in his lifetime?

A. Yes, sir.

Q. When did you first become acquainted with Ricardo Regidor?

A. When I went to Mr. Brown to get some money Mr. Brown introduced me to Mr. Regidor.

Q. Did you have an account current in the International Bank?

A. Yes, sir.

Q. Was there any difficulty in collecting any of the checks issued by you on that account current?

A. Yes, sir, a good deal of difficulty, we were not able to  
290 collect immediately.

Q. What was done when the parties were not able to collect the checks?

A. The Bank refused to pay the checks and we used to go to Mr. Regidor.

Q. Do you know why you had to go to Regidor?

A. Every time I needed something from the Bank, Mr. Brown told me to go to Mr. Regidor.

Q. When payment was refused of the first check issued by you what did you do?

A. I was told by Mr. Brown to go to Mr. Regidor and see him about the check.

Q. Had you ever known Regidor before that time?

A. It was at that time I first knew Regidor.

Q. From the time you first visited Mr. Regidor at the instance of Mr. Brown, how many times did you again return to the house of Regidor or to his office?

A. Always, because every time I needed money and issued my check they always refused to pay the check and I had to go every time to Mr. Regidor.

Q. Did you sign any instruments or documents in the house or office of Regidor?

A. Yes, sir.

Q. About how many?

A. Very many.

Q. Why did you sign those documents?

A. So many documents I refused to attach my signature but every time I refused they used to threaten me and refused to give me money and Mr. Cantero knows everything about it, because he was acting as a sort of secretary to Regidor. He knows everything.

291 Q. In your frequent visits there to the house and office of Regidor, did you meet Mr. Brown there?

A. Always in the morning and afternoon, on several occasions signing documents while Brown was there present.

Q. Who was it threatened you when you refused to sign the various documents?

A. Mr. Regidor and Mr. Brown.

Q. Tell the Court what they did and said and threatened?

A. Sometimes they told me that they would strike me and other times that they would throw me out of the window.

Q. Anything else?

A. No, sir, that is all, threaten to quarrel with me.

Q. To refresh your recollection, was there ever anything said to you by Regidor and Brown about prosecuting you and sending you to Bilibid if you failed to sign any of these documents?

A. Yes, sir, they so stated to me.

Q. State what they said?

A. They threatened me that they would strike me or throw me out of the window.

Q. What did they say about prosecuting you or sending you to Bilibid?

A. They told me that they would send me to Bilibid and that they would strike me.

Q. Do you remember how many promissory notes you signed in favor of the plaintiff Corporation?

A. Every time they used to send for me to compel me to sign pagares they told me that if I signed them nothing would happen to me. A good many, I do not know how many.

Q. Do you remember what the amount of the first note was that you signed in favor of the Bank?

292 A. There were so many of them that I do not remember a single item that there was. I was assured that nothing would happen to me and that they would not deceive me these were their statements.

Q. Why did you sign all these promissory notes?

A. *They* They usually told me that they knew God and would not deceive me and that everything they were doing was in my favor.

Q. Did you believe at that time what they said to you?

A. Yes, sir, because they told me that they recognized God and that they would never deceive me. I believed in Regidor's words because he was an old man and thought he would never be able to deceive me.

Q. Did you believe in Brown, the agent of the International Bank?

A. Yes, sir.

Q. Why did you believe what Brown said to you?

A. He said that he would never deceive me because he was acting according to the laws of God.

Q. At the time you signed these many documents at the demand of Regidor or Brown, did you know the contents of them; could you read them or were they read to you?

A. Yes, sir, the documents were read to me and explained the contents thereof.

Q. Did you do any gambling long previous and at the time of opening this current account in the International Bank?

A. Yes, sir I did at the beginning, I did not have any debts, but since I gambled I contracted debts and opened a current account

in the Bank in my favor. I am not fond of gambling, but since I took money from the Bank I started to gamble.

293 Q. Did you owe any money previous to the time you began gambling?

A. No, sir, never had any debts previous to that time.

Q. How much were you worth at the time you began gambling in property and money?

A. Including my son's property it amounted to about 800,000 pesos.

Q. What part of that belonged to you?

A. One-half.

Q. Did you own any property in which your son had no participation?

A. From the time I and my son separated I acquired property of my own, three houses.

Q. What kind of gambling did you engage in?

A. Monte and Burro.

Q. Did you win or lose at these games?

A. Lost.

Q. How much did you lose altogether in notes, pagares and cash?

A. About 300,000 pesos.

Q. What part of this was in cash and what part in pagares?

A. In cash about 100,000 pesos.

Q. This cash you lost was previous to the time you opened a credit in the Bank?

A. Yes, sir.

Q. Do you know what has become of these promissory notes and vales which you have issued for gambling obligations?

A. Some of these pagares and vales were acquired by Regidor at a lower price and charged to me at a higher price.

294 Q. About how long previous to the time you opened your current account in the Bank was it that you began gambling?

A. About two months.

Q. Did you know anything about the games of burro and monte and other games in which you engaged?

A. Yes, sir, but not very well.

Q. Had you ever played before two months about previous to your opening your account in the Bank?

A. Yes, sir, at first I played those games, but without staking any money.

Q. When was that?

A. Long before I started to gamble with money, about five years before that.

Q. Do you know whether the gamblers with whom you played burro, etc., cheated or swindled you in the games?

Judge ODLIN: Objected to as incompetent and immaterial.

The COURT: Objection overruled.

Judge ODLIN: Exception.

A. At the beginning I did not know anything about it, but subsequent to that I found out I was being cheated.

Q. Do you know how you lost the money which is represented by the Muscana obligation?

Judge ODLIN: Objected to as plaintiff does not claim anything of the Muscana obligation and has brought no suit to recover the same and said obligation is not in the possession of the plaintiff.

The COURT: Objection overruled.

Judge ODLIN: Exception.

295 A. I never gambled with Muscana, but Muscana acquired this pagare in combination with Regidor.

Q. How did you lose the money for which that obligation was given?

A. In monte.

Q. How much cash did you receive from the Bank for your own use personally?

A. About 60,000 pesos because not every time I presented my checks they were paid.

Q. Does that 60,000 pesos include the 30,000 paid to the Varadero and 9,000 to redeem the Legaspi property?

A. Yes, sir, the Legaspi was lost, the Legaspi money was lost in gambling and I mortgaged my house to cover that debt.

Q. Did that 60,000 pesos also include the money paid as alimony to your son Pedro?

A. Yes, sir.

Mr. GALE: That is all.

Cross-examination by Judge ODLIN:

Q. Do you remember when there was an investigation in this Court as to the application for the appointment of a guardian to take care of your property?

A. Yes, sir.

Q. Do you remember of being called before the Judge to testify in that matter?

A. I do.

Q. Do you remember whether you were asked as to the value of your property in Manila?

A. I do not remember.

Q. If you testified that you had property in Manila worth over 600,000 pesos was that statement correct?

296 A. I do not remember any of the questions put to me at that time, it is so long.

Q. If you testified that you were worth at that time also 600,000 pesos in property in the Province of Batangas was that statement correct?

A. I do not rememebr any of the questions as to the amount of my property.

Q. Is your property in Batanges worth 600,000 pesos?

A. Before the time of the insurrection but not now.

Q. Did you ever draw any checks on the International Banking Corporation that were not paid sooner or later?

A. Afterwards I was paid, at first I was refused and afterwards paid.

Q. Which gentleman did you first get acquainted with, Regidor or Brown?

A. Mr. Brown.

Q. Who introduced you to Mr. Brown?

A. I had known Mr. Brown for a long time since he was manager of the Chartered Bank and he also knew me. I did not know Mr. Regidor.

Q. Who introduced you to Mr. Regidor?

A. Mr. Brown.

Q. I understood you to testify you lost 100,000 pesos gambling before you borrowed money from the Bank, is that correct?

A. Yes, sir, already lost money when I took money from the Bank.

Q. About how much money had you lost before you borrowed money from the Bank?

A. About 30,000 pesos.

Q. You used to win occasionally in your gambling games, 297 didn't you?

A. Very seldom, out of twenty games very seldom I won once.

Q. But if you had won in those games you would not have had to borrow money from the Bank would you?

A. Of course; naturally.

Q. Your reason for applying to the Bank for a loan was the fact that you had lost money gambling?

A. Yes, sir.

Q. Was that the only reason?

A. Yes, sir, because before that I had money.

Q. Did you testify in the hearing on the application for a guardian that the reason you borrowed money from the Bank was, on account of lawsuits with your son, Pedro?

A. No, sir, only for gambling.

Q. Then you do not remember of testifying in this Court at the time of your guardianship proceedings was on account of lawsuits with your son Pedro?

A. I do not remember that, but I am certain I stated it was for gambling but not for lawsuits. I did not need to borrow money from the Bank for lawsuits; you do not pay for them all at once, you pay in installments.

Q. I understood you to tell the Court that you had been deceived by Mr. Regidor, is that correct?

A. At the beginning I did not know he was deceiving me, but afterwards I found out he was deceiving me. I never knew it until this pagare question was ventilated and found out I was greatly deceived.

Q. What pagare?

A. All the pagares.

Q. Who first told you Mr. Regidor was deceiving you?

298 A. At the end when all the papers were brought here; previous to that I did not know I was being deceived, otherwise I would have filed a complaint.

Q. When did you first know that Mr. Regidor deceived you?

A. When the papers were revealed here.

Q. When was that?

A. At this law suit, this question.

Q. This month or last month?

A. Since the beginning of this litigation of the Bank because it was then this deceit was disclosed to me.

Q. Who was your guardian when you first knew it, Mr. Cohn or Mr. Ilustre?

A. Mr. Ilustre.

Q. Then during all the time while Mr. Cohn was your guardian you never knew Mr. Regidor deceived you?

A. No, sir.

Q. Then Mr. Ilustre is the gentleman who made that discovery?

A. Mr. Cohn used to tell me also that I was deceived by Regidor but I was not certain about it; since I saw the papers I am certain I was deceived.

Q. About Mr. Brown; how did Mr. Brown ever deceive you?

A. I only found out when these papers were revealed here before the Court that Brown was in combination with Regidor, when all the papers were produced.

Q. Did Brown and Regidor threaten to pitch you and throw you out of the window; who was present?

A. The room was closed, no one was there.

Q. Was the window open or was it shut?

A. The window was open *by* the door was closed.

A. And nobody present but you and Brown and Regidor?

A. Yes, sir.

299 Q. Did you tell anybody about that?

A. I used to tell that to everybody. I did not think at that time they were deceiving me because they used to tell me that they knew God.

Q. And at the same time they were threatening to throw you out of the window for not signing documents?

A. Yes, sir, and that I was going to be sent to Bilibid.

Q. And that they believed in God?

A. Yes, sir, I believed so at that time they did recognize God.

Q. To whom did you first speak in regard to these threats of Brown and Regidor to throw you out of the window?

A. I used to tell that to my wife.

Q. Anybody else?

A. In conversations with my wife, many people used to tell me Mr. Brown and Mr. Regidor were deceiving me, but I did not give credence to that.

Q. To whom did you first speak about Brown and Regidor threatening you to throw you out of the window?

A. My wife.

Q. Did you speak to anybody else?

A. No, sir, it was simply said in passing; many people used to tell me they were deceiving me, but I did not believe it since Brown and Regidor said to me that they believed in God.

Q. Did you ever speak to anybody except your wife about this threat to throw you out of the window?

A. No, sir, just conversations in a passing way. Many people used to tell me but I did not give credence to it but I only believed it when I saw these papers.

Q. When Mr. Cohn was appointed your guardian, didn't you have confidence in Mr. Cohn?

A. No, sir, I did not.

300 Q. Didn't you think he was an honorable man?

A. I never talked with him because he used to send me away.

Q. When you were examined before the Court in the matter of this guardianship, why didn't you tell the Court about these threats of Brown and Regidor to throw you out of the window?

A. Many people used to tell me that they were deceiving me and that Regidor was a rogue, but I did not believe it.

Q. At the time of the matter of the guardianship was before the Court why didn't you tell the Judge about these threats that Regidor and Brown had made to you?

A. At the beginning they never used to frighten me, but at a later time was when they threatened.

The COURT: Answer the question: why didn't you tell that in court when you were here?

A. I was not at that time threatened yet by Regidor.

Judge ODLIN:

Q. Then these threats by Brown and Regidor were after Mr. Cohn was appointed your guardian, is that right?

A. At the beginning they also threatened me, but not in such a strong manner, but soon after the guardian was appointed I was threatened severely.

Q. Then Mr. Brown and Mr. Regidor threatened you much more violently after you had a guardian than they did before is that correct?

A. Yes, sir, it was at the time I was required to sign documents and some of which documents do not bear any date.

Q. Did you sign any documents after Mr. Cohn was appointed guardian?

A. Yes, sir, many documents.

Q. Did you tell Mr. Cohn about it?

301 A. No, sir.

Q. Why not?

A. Because I had never occasion to talk with Mr. Cohn, he used to send me away because I did not have confidence in him.

Q. Then Mr. Brown and Mr. Regidor never threatened to throw you out of the window before Mr. Cohn was appointed did they?

A. Yes, sir, also threatened me but not so violently; they used to tell me I was going to be sent to Bilibid.



Q. But you never told the court anything about it, did you?

A. No, sir, because at the time of appearing before the Court I was not asked whether I was threatened or not.

Q. Were you asked by the Court how much you owed the Bank at that time?

A. Yes, sir, I was asked and Mr. Regidor and Mr. Brown were both present there at the time the statement given by these two gentlemen was 107,000 pesos.

Q. Did the Court ask you any questions regarding that matter?

A. Yes, sir, but Mr. Brown and Mr. Regidor made the calculation and stated it was 107,000 pesos.

Q. Did you testify in that case at that time?

A. Yes, sir, I was asked if that account was correct and I said I was willing the settlement of accounts should be made before the Court.

Q. Did you ever see me before?

A. Yes, sir, but not personally.

Q. Do you know where my office is?

A. Yes, sir.

Q. Were you ever in that office?

A. Yes, sir.

Q. Was Mr. Ilustre your guardian with you?

A. Yes, sir.

Q. What took place?

A. Mr. Ilustre sent a letter to you asking if you were ready to see him in confidence and you answered affirmatively and then Mr. Ilustre went to your office and I went with him.

Q. What took place there?

A. Mr. Ilustre asked me if I wanted to settle the matter.

Q. Were any documents shown to you there by me?

A. Yes, sir, checks.

Q. Who signed those checks?

A. Some checks were signed by me with the exception of some, but I did not care to admit several of the checks.

Q. Were all of those checks signed by you, except one?

A. There were checks there that I had a receipt stating I did not receive the money for those checks and Mr. Regidor caused me to sign those receipts stating I was going to place same in my current account, but I never received the money.

Q. But if you did not receive the money somebody else did?

A. Probably Regidor because it was in his hands.

Q. Every one of those checks were signed by you except one which Cantero signed, isn't that correct?

A. Yes, sir, very many I did not admit.

Q. I am speaking of the signature, not the payment of the checks?

A. All the checks were signed by me including the 30,000 pesos and also pagare receipts which I had there.

Q. I am not speaking of any pagare, I am speaking of the checks. Isn't it true that you said every one of those checks was signed by you, except the Cantero check?

A. Yes, sir, but I did not receive the money.

303 Q. Now, with regard to the Cantero check, how did it happen that Cantero signed your name to a check?

A. I do not know, we never had any talk about Cantero taking money.

Q. What did you tell me in my office with regard to Cantero signing your name to one check?

A. I was wondering why Cantero had signed a check for me.

Q. What did I say?

A. Nothing, simply said I would have to talk with Cantero about it why he did it.

Q. Didn't I tell you that Cantero had a power of attorney signed by you?

A. I do not know anything about that, Mr. Cantero told me at a later time that Regidor made a power of attorney in my name.

Q. Don't you know now whether you gave a power of attorney to Cantero or not?

A. Mr. Cantero told me that not long ago, I did not know it before.

Q. Did you not know at the time what you were doing?

A. No, sir.

Q. Isn't Mr. Cantero your friend?

A. Yes, sir, I knew Cantero, he was living with Regidor.

Q. Isn't Cantero your friend to-day?

A. No, sir, merely an acquaintance.

Q. Do you mean to say that Cantero secured a power of attorney from you without your knowing anything about it?

A. I talked with Cantero about this matter when this lawsuit was started already and asked him why he signed the check and he said "I have a power of attorney"; he said that he had a power of attorney made by Regidor; he said that before he did not know  
304 about this power of attorney but it was made by Regidor, but when he saw the power of attorney it was already made.

Q. Cantero told you that he did not know anything about that power of attorney until Regidor told him, is that correct?

A. Yes, sir.

Q. Do you remember any statement made by you in my office to the effect that this power of attorney was signed by you in favor of Cantero on account of threats?

A. All the documents that I was asked to sign at first I refused to do so and only yielded when I was threatened.

Q. Do you remember any statement made by you in my office to the effect that this power of attorney was signed by you in favor of Cantero on account of threats?

A. I did not tell that I gave any power of attorney to Cantero.

Q. Didn't you tell me that Cantero signed this check with your name under a power of attorney which you executed to him on account of threats and force?

A. No, sir.

Q. Didn't you tell me that was the only reason you would not admit that check which Cantero signed?

A. I was simply astonished to find a check there by Cantero.

Q. Then you do not remember telling me that that power of attorney you gave Cantero was signed by you under threats?

A. I do not, I said nothing.

Q. You do not remember making the same statement to your guardian, Senor Ilustre at that time and place?

A. At the time we went there we did not talk to the effect that I gave Cantero any power of attorney, we simply talked about a check that was there.

Q. Do you remember applying to the International Bank  
305 for an advance of money in writing which was signed by you in the presence of Mr. McMicking, the Clerk of this Court?

A. There was a document signed in the presence of McMicking, but we never went to the Bank.

Q. Then that document was never presented to the Bank?

A. No, sir; I do not know to my knowledge whether it was presented to the Bank.

Q. Whom did you present the paper to after you signed it?

A. It remained there, with them, they kept it.

Q. Whom do you mean by "them"?

A. Do you refer to the Cantero paper?

Q. To the paper you signed in the presence of Mr. McMicking  
I show you Defendant's Exhibit 3 and ask you if that is your signature?

A. Yes, sir.

Q. This is addressed to Mr. Cantero; did Mr. Cantero go with you before McMicking?

A. Yes, sir.

Q. Do you know what was done with this document after you signed it?

A. I was talking to Mr. McMicking at the time I signed this document, I was not well acquainted with the contents of it. I only know it when I saw the check of Cantero and I asked Cantero why he signed it and he said he had a power of attorney.

Q. Do you know what was done with this document after McMicking took the acknowledgment?

A. Taken to the house of Regidor.

Q. Do you remember when you were examined before the Court  
306 in the matter of the guardianship that you were asked to explain your indebtedness to the International Banking Corporation and what your reply was?

A. The checks were shown to me and Mr. Regidor and Mr. Brown told me that my debt was 107,000 pesos and I told them we were going to settle that matter.

Q. I am not speaking of the amount, but of the nature; do you remember being asked when you were examined at the time of the guardianship proceedings what the money was used for which the Bank had advanced you?

A. Yes, sir, I said it was for gambling.

Q. Didn't you tell the Court that that money was used, some of it — expenses for your boats and sometimes for expenses of litigation?

A. Yes, sir some spent to gamble, some on the houses and some on other things.

Q. Some of it was spent on account of your ships wasn't it?

A. Spent it for all things, the properties and some of it was spent in gambling.

Q. Some of it was spent on account of your ships wasn't it?

A. Some of it in repairing of ships and some in gambling.

Q. And some of it on your houses?

A. Yes, sir, some on houses and you can know very well money is spent in all kinds of things, gambling included.

Q. And some of it was spent on account of the costs of litigation with Pedro wasn't it?

A. Yes, sir, some of that money was spent in gambling and my own money to pay losses in gambling.

Q. And some of it was spent in litigation with your son, Pedro?

A. Yes, sir, some of it, most of it in gambling.

Q. Now you had litigation with other people besides your son, Pedro, didn't you?

A. No, sir.

Q. Do you know Ana Ceson?

307 A. I believe that one is a pagare.

Q. Didn't she sue you?

A. No, sir, it was not carried out.

Q. But wasn't that a suit started in this court and afterwards settled by you?

A. There was no complaint filed against me by Ana Ceson.

Q. Didn't you testify in this court at the time of the guardianship proceedings that there had been a suit started against you by Ana Ceson and that you had settled it?

A. Yes, sir.

Q. Do you know lawyer Francisco Ortigas?

A. I do.

Q. Didn't he start a suit for one of his clients in this court against you?

A. Yes, sir.

Q. Do you know Francisco Rodriguez?

A. Yes, sir.

Q. Didn't he start a suit against you in this court also?

A. Yes, sir.

Q. You won that suit in the Court of First Instance?

A. About a pagare, yes, sir.

Q. But you lost it in the Supreme Court, didn't you?

A. So it is said.

Q. Do you know Don Francisco Poblete?

A. Yes, sir.

Q. Did he have a suit against you in this court?

A. Yes, sir.

Q. Do you know a man by the name of Papa?

A. Yes, sir.

Q. He had a suit against you also didn't he?

A. He has not sued me as yet.

Q. Do you know Faustino Lichaueo?

A. Yes, sir.

308 Q. Did he have a suit against you?

A. Yes, sir, that was the case Mr. Ortigas intervened in.

Q. Do you know a man by the name of Geronimo Guseppe?

A. Yes, sir.

Q. Did he have a suit against you?

A. No, sir.

Q. Sure about that?

A. I am sure.

Q. Various other people had suits against you didn't they?

A. Some, yes, sir, about gambling pagares.

Q. You had some suits in this court with which gambling had no connection didn't you?

A. No, sir, all for gambling.

Q. Didn't the Pacific Trading Company bring a suit against you for something over 2,000 pesos?

A. Yes, sir, that is also for gambling; that is also for money the result of gambling.

Q. Didn't you testify before this court at the time of the guardianship proceedings that the suit of the Pacific Oriental Trading Company against you was for goods and merchandise sent to the provinces?

A. I lost that money in gambling and the person to whom I owed the money charged me to take these goods, I did not receive the goods but the man whom I owed money for gambling.

Q. But the Pacific Oriental Trading Company did deliver the goods at your order didn't they?

A. Yes, sir.

Q. And you did not pay for those did you?

A. That money I lost at gambling and the gentleman whom I owed told me he would get goods and I signed for the goods.

09 Q. And those goods were taken on your order were they not?

A. Yes, sir.

Q. And you did not pay for them did you?

A. No, sir, not yet.

Q. And they sued you didn't they?

A. Yes, sir.

Q. Wasn't there another smaller suit against you for goods sent the provinces wherein the plaintiff was the American Commercial Company?

A. Yes, sir, I did not get these goods personally; two persons to whom I owed as a result of gambling.

Q. How many law suits did you have with your son, Pedro, at that time?

A. Many.

Q. Do you remember the number?

A. Several, some about jewelry shop and on property and houses.

Q. You had as many as seven suits with Pedro didn't you?

A. Yes, sir.

Judge ODLIN: That is all.

Redirect examination by Mr. GIBBS:

Q. You stated on your direct examination that the total amount received by you from the Bank was 60,000 pesos and in cross-examination you stated that you had formerly testified that you paid out various sums for litigation with Pedro for repairs of ships and for other necessities. State whether all those amounts that you paid out after you opened the account were included in that 60,000 pesos?

310 A. Yes, sir, as I had money of my own I used to draw every month 5,000 pesos from the Bank.

Q. Answer the question directly, whether those 60,000 pesos includes all the money you received from the Bank for all purposes whatever?

A. Yes, sir, including gambling.

Q. Do you remember giving a check on the International Bank for 30,000 pesos against your current account?

A. I did not turn this check into the Bank; Mr. Regidor drew the check and told me to sign it and I said, why should I sign it and he said "This money will be placed in your current account" and I did not receive the money for that check.

Q. Do you remember of drawing another check of 9,000 pesos on your current account?

A. Yes, sir.

Q. What was that for?

A. I lost it gambling and mortgaged my house and this 9,000 pesos check was issued for the redemption of the house, but it was several months after.

Q. From whom was this house to be redeemed?

A. Senor Legaspi.

Q. To whom did you give the check?

A. To Mr. Regidor. When this check was taken to the Bank Regidor presented it to the Bank.

Q. You stated on cross-examination that you did not know that you had been deceived by Regidor until after you had seen the papers; you stated also that you refused to sign certain documents and did not sign them until you were threatened; explain to the Court if you can why you refused to sign the documents, if you did not know they were deceiving you?

311 A. I was asking for copies of the documents in order to show to other people, but they told me they were not deceiving me and that they recognized God.

Q. And because they refused to let you take copies you refused to sign the documents?

A. Yes, sir, at first. They told me that they recognized God and therefore were not able to deceive me.

Q. At the time you testified in the guardianship proceedings who accompanied you if any one, to court?

A. I had several friends with me.

Q. Were Brown and Regidor in court at that time with you?

A. I found them in the Court when I arrived.

Q. Your attention was called to an obligation in favor of Papa

on cross-examination; do you know what that obligation in favor of Papa was for?

A. Gambling at monte; my debts were all contracted at gambling; I had money before that.

Q. When were these judgments against you in the case of the P. O. T. Company and other actions rendered against you—before or after the appointment of the guardian?

A. No judgment was rendered yet.

Q. Were any of the judgments in this connection rendered against you to your knowledge before the appointment of Mr. Cohn as your guardian?

A. I do not know because Mr. Cohn never told me about them. He did not say anything to me about them.

Mr. GIBBS: That is all.

VICENTE ILUSTRE, a witness for the defendants, recalled:

Direct examination by Mr. GIBBS:

Q. You are the present guardian of Francisco Martinez?

A. Yes, sir.

Q. Have you been such since about the 1st of the present year?

312 A. Yes, sir, since the 6th of January.

Q. The plaintiff Bank makes a statement of the income collected and disbursements made on account of certain properties of Francisco Martinez in which they say that the sum of 2522.99 pesos has been disbursed by them on account of those properties since the 1st of January of this year. I will ask you to state whether or not you were consulted in regard to these expenditures and whether or not they were made with your authority and consent as guardian of Francisco Martinez.

A. I have neither been consulted nor did I authorize or consent to the expenditure of the money, on the contrary about the first of this month, March, I presented a motion in the other part of this court asking that the Bank be required to deliver over to me the properties, as guardian, as I considered their possession of the same illegal and at the same time render me account of their administration. They refused to render accounts but the attorney for the Bank stated to Judge Crossfield that there was a question already pending before this sala and that he would submit to this court for the proper judgment and up to the present time they have rendered me no accounts.

Mr. GIBBS: That is all.

Cross-examination by Judge ODLIN:

Q. After the statement was made to the Judge of Part II, that the matter was already pending in this court, what reply did you make to Judge Crossfield,

A. I insisted upon my motion because I believe the position of



the Bank to be illegal and also contended that the action presented there was distinct from the one here.

Q. What reply did Judge Crossfield make to your statement?

313 Mr. GIBBS: Objected to as improper cross-examination and immaterial.

The COURT: It is immaterial.

Judge ODLIN: Question withdrawn.

Q. Do you remember when you visited my office with Don Francisco Martinez?

A. Yes, sir.

Q. Do you remember the conversation between yourself, Don Francisco Martinez in my presence concerning the check signed by Pedro Cantero?

A. Yes, sir.

Q. Do you remember that there was also a conversation between you and me in the presence of Don Francisco concerning the power of attorney given to Cantero by Francisco Martinez?

A. Yes, sir.

Q. And do you remember having a conversation with Don Francisco in Tagalog in my presence?

A. Yes, sir.

Q. Will you please state to the Court what you told me in Spanish after your conversation with Don Francisco in Tagalog in my presence?

A. Kindly designate specifically what portions of the conversation you have reference to.

Q. Explain to the Court what Francisco Martinez told you in regard to the execution of the power of attorney given by him to Cantero?

A. When I saw a check not signed by Francisco Martinez? I do not remember well at this moment, so many days having transpired, but it seems to me you were the first to say that that check

314 was probably signed by virtue of a power of attorney. Mr.

Francisco Martinez told me in Tagalog that he heard that he had as a matter of fact issued a power of attorney in favor of Cantero in which power of attorney he had no real knowledge. I do not remember whether I explained in detail this conversation to Mr. Odlin.

Q. Didn't you tell Don Francisco Martinez's objection to acknowledging that check was that this power of attorney had been gotten from him by threats?

A. Not specially in reference to this power of attorney, but in speaking of this power of attorney it was stated that many documents executed by Francisco Martinez had been signed on account of threats and deceit and it was I who added on my own account, in view of the answer of Francisco Martinez that he had no real knowledge of this power of attorney, that it perhaps belonged to the same class.

Q. Do you not remember that our conversation concerning these other documents took place a few days afterwards?

A. We had another conversation about the 30,000 pesos check a few days later and at that time we spoke in general about the documents, so much so that I stated that I could not admit, if we arrived at a settlement, all of the documents which were in those checks and these checks I would never admit in case of settlement because I had knowledge that for the greater part of these checks he had received no money and in the presence of Mr. Odlin Francisco Martinez said in Tagalog that those checks of a large size and of a blueish grey color were not his.

Q. Did Francisco Martinez in your presence and my presence admit his signature was on every check, except the Cantero 315 check?

A. Yes, sir, signed by him, but with the condition that he expressed that they had been signed, he being deceived.

Judge ODLIN: That is all.

Redirect examination by Mr. GIBBS:

Q. Do you know how many check-books Francisco Martinez had that were used in connection with his current account in the Bank?

A. According to what has been told me—

Mr. GIBBS: That is all.

FRANCISCO MARTINEZ, a witness for the defense, recalled:

Direct examination by Mr. GIBBS:

Q. I call your attention to Defendant's Exhibit 129, and ask you to state whether that is the check book which you used in drawing checks against your current account in the International Bank?

A. Yes, sir.

Q. Is that the only check book you have had?

A. Yes, sir.

Mr. GIBBS: That is all. I offer this stub-book in evidence as Defendant's Exhibit 129.

Judge ODLIN: No objection.

The COURT: Let it be admitted.

It is admitted that the International Banking Corporation was organized under the laws of the State of Connecticut, United States of America, with branches in London, Washington, Manila and other places, and that the branch in Manila was opened in 1902 with Robert W. Brown as sole manager from the 1st of January, 1903, to about the 1st of March, 1904, under the power of attorney 316 introduced in evidence marked 128 for the Defendant.

It is also agreed (subject to correction) that Mr. Wolfson first took possession of the property now in the possession of the International Banking Corporation for the same on December 4, 1903.

Adjourned until Wednesday, March 14, 1906—2:30 P. M.

Proceedings Held March 14th, 1906, at 3 P. M.

Same appearances.

*Rebuttal for the Plaintiff.*

JOSE ROBLES LAHESA, a witness for the plaintiff, being duly sworn by the Clerk, Mr. Heras, in Spanish, testified as follows:

Direct examination by Judge ODLIN:

Q. What is your name, residence and occupation?

A. Jose Robles Lahesa, attorney at law, live in Manil-

Q. Do you know Joseph N. Wolfson?

A. Yes, sir.

Q. Did you know Mr. Wolfson in the latter part of the year 1903?

A. Yes, sir.

Q. Were you acquainted with Francisco Martinez at that time?

A. No, sir.

Q. Were you acquainted with the Banking institution here called the International Banking Corporation?

A. Yes, sir, I was the attorney of that Bank.

Q. As attorney for the International Banking Corporation at that time, did you have any transactions with Mr. Wolfson in  
317 regard to any real estate in the City of Manila upon which the Bank had a claim or pretended to have a claim?

Mr. GIBBS: Objected to as immaterial. If he answers "yes" or "no", all right.

A. Yes, sir.

Q. Please state what properties were concerned in those transactions?

Mr. GIBBS: Objected to as incompetent and immaterial and not binding upon the defendant being a transaction in which none of the defendants participated.

The COURT: Objection overruled.

Mr. GIBBS: Exception.

A. I cannot state exactly as to what kind of properties was spoken of, but I know of properties belonging to Francisco Martinez in the City of Manila.

Q. What Martinez do you refer to?

A. Francisco Martinez.

Q. Please explain how you happened to have dealings with Mr. Wolfson in respect to those properties?

Mr. GALE: Objected to as irrelevant and immaterial and not binding upon the defendants.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. Speaking one day in the Bank with Mr. Brown, he stated that the purchase with pacto deretro had expired and that the Bank was not authorized to collect the rents from these houses and asked

me who could be placed in charge of the collection of these rents and I then told Mr. Brown that I had a person I would guarantee who would take charge of the collection of the rents and I entrusted the collection of the rents to Jose Coto and to Mr. Wolfson 318 and that they should go from house to house and advise the tenants to pay the rents to them. I spoke to Mr. Wolfson and prop-osed to him about entrusting to him the collection of the rents and he accepted and also told Mr. Wolfson that he should turn over to the Bank the amounts collected which he did.

Mr. GALE: Move to strike out the answer of the witness for the reason that the statements made by R. W. Brown are hearsay and and incompetent and immaterial.

The COURT: I think it is hearsay what Brown said about it. But let the motion be overruled.

Mr. GALE: Exception.

Q. Please state to the Court when you first talked with Mr. Wolfson on this subject?

Mr. GIBBS: Objected to as incompetent, irrelevant and immaterial.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. I cannot tell exactly the date because of the time that has passed.

Q. Do you remember a proceeding which took place in this Court wherein the prosecuting attorney of the City of Manila, Mr. Charles H. Smith, filed an application for the appointment of a guardian for Francisco Martinez?

A. Yes, sir, I intervened in that case.

Q. At whose request did you intervene?

A. The International Bank.

Q. Did your conversation with Mr. Wolfson take place before or after that proceeding?

Mr. GALE: Objected to as immaterial.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. I can almost state positively that the time I secured 319 Mr. Wolfson to look after the collection of the rents was a month or a month and a half before the guardianship proceedings.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. Why did you intervene in the guardianship proceedings of Francisco Martinez for the Bank, under whose instructions?

A. Under the instructions of Mr. Brown, the manager of the Bank.

Q. Was it R. W. Brown?

A. Yes, sir.

Q. And Mr. Brown's instructions to you were to oppose the appointment of a guardian were they?

A. Because of the time that has passed I cannot remember what my statements were in that trial, but I believe that I can remember the Court denied my authority to intervene in that matter.

Q. But the facts remain that you as attorney of the International Banking Corporation considered it dangerous to the interests of the Bank to have a guardian appointed to conserve the estate of Francisco Martinez?

A. I do not remember what my intervention was.

Q. You do not remember whether you appeared in the suit or under what instructions you appeared, but you remember you had a conversation with Wolfson before that occurred?

A. Whatever intervention I might have had in those proceedings, the records would show that.

Q. Don't you know as a matter of fact that you did not personally appear in the proceedings but that Mr. Frederick Garfield Waite appeared as attorney for the Bank and opposed for the Bank  
320 the appointment of a guardian for Francisco Martinez?

A. When I went to Mr. Brown and got from him instructions to intervene in that matter, Mr. Brown had already given instructions to Mr. Waite. When I went to the Bank, as I went every morning, Mr. Brown told me that he had already given instructions to Mr. Waite and that I should go and see Waite and Waite should act under my instructions.

Q. And Mr. Waite did act under your instructions and opposed the appointment of a guardian?

A. When I came to the Court Mr. Waite told me he had instructions from Mr. Brown to intervene in the matter and I told him all right. I remember now from your refreshing my memory, but I just remember now; before I did not remember what intervention I had in the matter.

Q. You cannot remember those instructions of Mr. Brown in an important suit but you remember a conversation with Wolfson and can remember it took place a month and a half before that suit?

A. Yes, sir, because for that administration a man under my recommendation was employed, Mr. Coteró, and it is the circumstance which made me remember.

Q. After the appointment of Mr. Cohn as guardian, you also went to Mr. Cohn to try and get him to ratify the various instruments of pacto deretro of deeds and notes, etc., which purported to be signed by Francisco Martinez?

A. I do not remember that. I remember that I saw Mr. Cohn but I do not remember what particular properties.

Q. You saw Mr. Cohn in the interest of the Bank, didn't you?

A. Yes, sir, but I think it was for a correction of accounts or revision of some checks.

Q. In respect to Martinez's matter?

A. Yes, sir, to correct something.

321 Q. Did you try to get him to ratify the checks?

A. No, sir.

Q. How long have you known Mr. Brown?

A. For many years, certainly 10 or 12.

Q. What was his business, what institution was he connected with before being manager of the International bank?

A. Manager of the Chartered Bank and I was attorney of the Chartered Bank and that is why I knew him.

Q. And it is true, isn't it that Mr. Brown was discharged from the Chartered Bank as manager because of irregularities and frauds in relation to the Mendezona loan?

Judge ODLIN: Objected to as immaterial.

The COURT: Objection sustained.

Mr. GALE: Exception.

Q. Do you know why Mr. Brown was discharged from the International Bank?

A. I do not know.

Q. Do you know Mr. Lee of the International Bank?

A. Yes, sir.

A. How long have you known him?

A. I believe I have known him 6 or 7 years.

Q. Did you know Mr. Lee when he was connected with the Chartered Bank?

A. Yes, sir. I remember to have known him from the date when he was connected with the Chartered Bank.

Q. And Mr. Lee was in charge of the Oriental Division of the Chartered Bank was he not?

Judge ODLIN: Objected to as immaterial.

The COURT: What do you expect to show?

Mr. GALE: I want to lay the foundation to show the actual knowledge of Mr. Lee, who appointed Mr. Brown here, and that he  
322 was the one who discharged him from the Chartered Bank.

The COURT: Objection sustained.

Mr. GALE: Exception.

Q. Mr. Lee was manager of the Orient *is* he not, including China and Manila?

A. I understand that Lee is a chief inspector of the International Bank.

Q. He has general supervision over the banks situate in Manila & China?

A. Yes, sir.

Q. Isn't it a fact that Mr. R. W. Brown was discharged from the International Bank by Mr. Lee because of irregularities and frauds in the transactions had with Ricardo Regidor the Casa Comision, Sy Chuy Chim and Francisco Martinez?

A. As attorney for that Bank I did not intervene in any matter concerning the Casa Comision or Francisco Martinez.

Q. I understand that; but the question is, whether Mr. Lee did not discharge Mr. Brown because of Mr. Brown's irregularities in these cases; don't you know that as a fact?

A. I do not know, because the matters which took place between

Mr. Brown and the International Bank, I only know what is known by the general public.

Q. You know as a matter of fact, don't you, that Mr. Brown was discharged from the International Bank long before his contract of service expired and immediately after the investigation by Mr. Lee and other officers of the Bank of these transactions of Mr. Martinez, the Casa Comision and others?

A. The date coincides with that, but as to the facts I cannot say.

323 Q. Are you very positive that the conversation you referred to as having with Mr. Wolfson was before the suit for the appointment of a guardian for Francisco Martinez?

A. Yes, sir, it was a month or a month and a half.

Q. Have you examined your records and files in relation to the matter since the matter has come up this time?

A. No, sir, but that can be corroborated by the receipts of Mr. Wolfson to the tenants for the rents.

Q. How long before the first collection of rent was your conversation with Mr. Wolfson?

A. 2 or 3 days after our conversation Mr. Wolfson began to collect the rents.

Mr. GALE: That is all.

CHARLES C. COHN, recalled for the plaintiff in rebuttal:

By Judge ODLIN:

Q. You have been sworn in this case?

A. Yes, sir, as a witness for the defense.

Q. Were you in court on Monday of this week when Don Francisco Martinez testified?

A. No, sir, I was not.

Q. Mr. Martinez testified in substance that during the time you were his guardian he attempted to explain to you in detail the violence and force that he had received at the hands of R. W. Brown, the then agent of the International Banking Corporation and of Ricardo Regidor in connection with the execution of certain documents but that you seemed unwilling to talk with him and would dismiss him with more or less abruptness?

Mr. GALE: Objected to as assuming something Francisco Martinez did not testify to.

324 Judge ODLIN: I withdraw the question.

Q. Francisco Martinez in testifying before the Court made a statement in regard to his failure to impart to you while you were his guardian, certain circumstances surrounding the execution of certain documents. Please state to the Court as concisely as you can, what took place between Francisco Martinez and yourself in regard to his dealings with the International Banking Corporation as reported to you?

A. During the entire two years of my guardianship—first occupied by a desire to gain information as to basis for an action against the International Bank and enjoining them from interfering with



my administration of the so-called Martinez properties and to cancel certain void instruments, clouds upon Martinez's title, and afterwards as a means for substantiating my defense and cross-complaint in the action commenced by the International Bank in the foreclosure of those documents—I made repeated efforts at all times to gain information from Francisco Martinez concerning his dealings with the International Bank and more particularly to have him corroborate reports I had received concerning his dealings with Ricardo Regidor and Mr. Brown. I found that Mr. Martinez would not give me a particle of information; his answers generally consisted of that he did not remember, that he would have to have the checks signed by him on the International Bank before him in order to give me an account of the transaction referred to by that particular check.

I made efforts to reach Martinez and get him to believe that  
325 this information was desired for his own good. I went to

Mr. Armstrong, of the firm of Armstrong & Mackay, who explained to me he was the lifelong friend of Mr. Martinez, and I tried to get him to explain to Martinez why this information was wanted and would result in Martinez's good. According to my best information and belief, Mr. Armstrong had that conversation with Martinez to no avail. I also tried to convince Martinez of my good faith and sincerity in my statements in acting in his behalf by explaining to him the necessity for having this information and I went to Mr. Chicote and explained to him the necessity for my having this information; Mr. Chicote was representing Martinez in the proceedings to oust me from the guardianship and that failed. And, failing in that I went to Mr. Gale, as associate counsel for the defense in this case, because I knew that Mr. Gale enjoyed Mr. Martinez's confidence. When Mr. Martinez told me on one or two occasions that if he had the checks before him, the checks that had been signed, that he would explain to me how it happened he signed and the transaction referring to each one, I made attempts to secure those checks but never have seen or had one of those checks in my possession. I did not succeed in getting them. In my own personal conversations I have repeated to him and thought to convince him that he should tell me. I repeated to him information I had and asked him to corroborate it and he never has corroborated one single statement which is due to the best of my observation to the fact that he did not trust me, that he had been taught to distrust me and he was pinning his faith on the order being reversed appointing me  
guardian.

326 Q. With regard to your unsuccessful efforts to see the checks, state whether these efforts were made before this suit was brought or after?

A. As I remember, before and when I had in contemplation the bringing of a suit myself as plaintiff.

Q. Do you remember when this suit was brought?

A. Yes, sir, about eight months ago.

Q. Wasn't this suit brought since I resigned from the Bench, do you not remember that distinctly?

A. It was some eighteen months ago. I remember my answers to this suit were drafted in the month of May, 1905.

Q. Now, as a matter of fact, this suit was brought about a year ago?

A. Yes, sir, about a month before my answers were drafted I remember that instance because they were drafted by me during a visit to the Summer Capital at Baguio.

Q. You represented the defendant in this suit in which I represent the plaintiff, didn't you?

A. Yes, sir.

Q. After this suit was brought were you at any time refused permission by the plaintiff to see those checks or any other evidence in the possession of the plaintiff?

A. No, sir, I never was refused. I do not know that I ever definitely applied to see the checks.

Judge ODLIN: That is all.

Cross-examination by Mr. GIBBS:

Q. From your investigations who were those people who were constantly influencing and attempting to keep Francisco Martinez from you so you could not make your investigation and could not present your defense?

327 A. As nearly as I know they were—I do not know that I can name the different persons—but the principal ones were R. W. Brown and Ricardo Regidor.

Q. What did your investigations show you in reference to the mental capacity of the old man to look after his own affairs and protect his interests?

A. That he was absolutely incompetent to comprehend what was for his interests or anything about them at all, that it was all mere chaos to him.

Q. Did you also try to consult with him and ascertain the condition of his various properties and their occupancy by tenants?

A. When I was first appointed guardian that was my first duty. The day Francisco Martinez announced his satisfaction with my appointment and signed a written announcement of his satisfaction of my appointment, immediately after the signing of that, he accompanied me to my office and he was accompanied by his so-called book-keeper and the collector that he had employed and I explained to them that my object was to become informed immediately of the condition of his property, to see who his tenants were, under what terms they held their tenancies, how much back rents there were and other necessary data, and asked if any books were kept. I was informed there were and I asked that they be brought over to my office; explained that I proposed to continue at least temporarily in my employ, both the book-keeper and the clerk, because of their knowledge of the affairs. From that time for the period of about a week I should say, I endeavored daily to get possession of the books

showing whom the tenants were, showing what rents they  
328 were owing, for what rents they were obligated to pay and I found a great deal of resistance and could not get what I needed at all and finally I explained to the collector who had sense enough to understand what I wanted, but he kept putting me off

by bringing exactly what I had not asked for, that I proposed to get this information and it was my right to have it and duty to obtain it and I proposed to get it, even if I called the intervention of the Court, and I gave him twenty-four hours to produce what I had required of him. When the twenty-four hours had all but expired, I was finally brought the books and data that I needed, and the collector who brought them refused to remain and explain them to me and I have never seen him since, except casually passing; he has never returned to the office, he went immediately into the employ of the International Bank as their collector.

Q. Who was the attorney for Francisco Martinez at the time he consented in writing to your appointment as guardian?

A. Well inasmuch as a guardian having been appointed prior to that—

Q. I will ask you if Judge Kincaid was not representing him and the attorney who prevailed upon him to make no objection to your appointment and to make a written acceptance of it?

A. It is not fair to Judge Kincaid to say that he "prevailed upon him to do so;" he entertained the hope that he would do so and for that reason I met Mr. Martinez in Judge Kincaid's office and Mr. Martinez stated then that he had his heart set on the appointment of F. E. Green, because F. E. Green had promised to manage the properties in a certain way and asked me if I would obligate myself to do the same and I told him I would not do anything of the kind but that the estate should be managed for the purpose of paying his debts and saving as much of the estate as possible.

Q. You know that Judge Kincaid did advise Mr. Martinez to submit to your appointment without any further opposition don't you?

A. Judge Kincaid did advise that, yes, sir.

Q. Do you know how soon after that he ceased consulting further with Judge Kincaid?

A. Immediately thereafter. He asked Judge Kincaid during that interview to be his attorney and Judge Kincaid told him that he would not require the services of an attorney thenceforth.

Q. So it was practically from the beginning you had the difficulty you referred to?

A. Yes, sir.

Q. Can you tell how long after your appointment as guardian it was that that collector went over to the employ of the International Bank?

A. I should say between a week and ten days.

Mr. GIBBS: That is all.

Redirect examination by Judge ODLIN:

Q. I will ask you to state how many properties, of Martinez were in the possession of the Bank at the time you were appointed guardian?

A. I do not know. At the time I first commenced to collect rents soon after my appointment as I could inform myself of the status of the properties and tenants, I had been served with notice

from the International Bank that they claimed the right to collect rents and some had receipts for rents.

A. You were appointed guardian come day in November 1903?

330 A. Yes, sir, 19th of November, I think.

Q. Will you state whether or not the Bank was in possession of several of those properties previous to that day?

A. I cannot state.

Q. So far as you know they may have been?

A. So far as I know they may have had the constructive possession; the buildings were actually in possession of tenants.

Judge ODLIN: That is all.

JOSEPH N. WOLFSON, recalled as a witness for the plaintiff in rebuttal:

Direct examination by Judge ODLIN:

Q. Can you state when you were first consulted by the International Banking Corporation or by any of its agents or officers or attorneys with regard to the property upon which the Bank claimed to have a lien as against Francisco Martinez?

Mr. GALE: Objected to as immaterial and irrelevant.

The COURT: Objection overruled.

Mr. GALE: Exception.

A. Since I have testified in this case the other day, I have examined to a certain extent my books and papers and I also conferred with Mr. Robles in reference to the matter. I am positive that I had been advised to take possession or to collect the rents for the properties which I am now collecting, sometime early in November. Now, after consulting with Robles, my memory this morning was refreshed. It was in anticipation of some proceedings, I do not know what and Mr. Robles stated correctly, that I had been suggested, but I was attorney for the International Bank since the 3rd of August, 1903, or had been attorney for the International Bank since the 3rd of August, which was the date of my employment by them. It is true that the money was all paid into the International Bank according to my books and statements before the 5th of December, some 700 and odd pesos.

Q. Did you take possession of any property in which Francisco Martinez was interested after Mr. Cohn was appointed guardian?

A. No, sir, I could not do that.

Q. During the months of November and December, 1903, do you know whether the Bank employed yourself in connection with that property?

A. Well, as I stated, Mr. Robles was the regular counsel for the International Bank when I was first employed and at a meeting at the Bank, Mr. Brown told me that I would take charge of the collection of—

Mr. GALE: Object to that conversation.

WITNESS: I took charge of the collection of the rents in connection with a man by the name of Oterio, Antonio Oterio who signed the receipts as the representative of the International Bank. I did not sign them at first, he signed them.

Mr. GALE: Move to strike out the answer as not the best evidence, immaterial and not binding upon the defendants.

The COURT: Objection and motion overruled.

Mr. GALE: Exception.

332 WITNESS: I collected the money but Oterio signed the receipts, that is, some of the receipts.

Q. State whether you know if any person in behalf of the International Banking Corporation had anything to do with those properties during the months of November and December, 1903, besides yourself, Senor Robles and this man Oterio?

A. Not that I know of.

Judge ODLIN: That is all.

Cross-examination by Mr. GALE:

Q. You locked up your books and statements didn't you?

A. Yes, sir.

Q. And your books show the first money collected by you was in December 5, 1903?

A. No, sir, my books show that the first money paid to the International Bank was on the 5th of December, 1903, 708 pesos and some cents Mexican.

Q. Your books and statements show that the first money paid to the International Bank was on December 8 and the first money collected by you was on December 5th?

A. You are right.

Q. And your docket in which you keep an account and memorandum of the consultations that you had with the Bank shows that the first consultation you had with the Bank in connection with that party was on December 2nd, doesn't it?

A. It does show that, but it does not prove however that every consultation I had with the International Bank was docketed; I was frank in showing you my docket.

Q. Also isn't it true that on November 24th is the first date of any kind that appears in your records or books in connection with the Martinez property which is in the nature of a report to Mr. Lahesa of the properties which you had looked up as belonging to Francisco Martinez, being a copy of the letter to Mr. Lahesa?

333 A. That was the first paper that I found in searching with you, but that does not obtain at all that it was the first connection I had with the properties connected with Francisco Martinez.

Q. It is true also, isn't it, you had the same collector who was formerly the collector of Francisco Martinez?

A. I have.

Q. And it is also true that he stated to you last night and in talk-

ing together you stated that he accompanied you when you first visited the property and had the interviews with the tenants?

A. That is true. I want to explain that since the day I took charge of the properties of Francisco Martinez for the account of the International Bank, I make it a point to collect on the 5th of the month, but collections come in all during the month. Now I say emphatically we collected 708 pesos on the 5th of December—I want to explain——

Mr. GALE: Objected to any voluntary statements of that kind.  
The COURT: Let him proceed.

WITNESS: This 708 pesos, the first collection I made *from* Francisco Martinez, in view of the fact that the tenants had been paying 10 pesos and 3 pesos and 5 pesos at their pleasure and well, before I took charge I am certain that I interviewed those tenants early in November that I would be around to make my collection on the 5th of the month, that is why I am sure, without having found my data, that I took charge of these properties prior  
334 to the 5th of December.

Q. Will you produce the original first statement and the supplemental statement and the letter or copy of the letter to Mr. Lahesa?

A. It is private information and if the Court orders it I will produce it. I do not know whether I am called upon to produce private matters between myself as attorney and the International Bank, or copies thereof. The original is signed by the Bank and it is my voucher. To make the matter clear, I will state positively that my employment by R. W. Brown in regard to taking possession——

Mr. GALE: Objected to as it appears that this witness is attorney for the Bank.

WITNESS: I want to state that I never made or attempted to violate the order of your Honor of November 19, 1903. I had cognizance of it because I was in your Court to present a motion for an appeal; and I had possession then of these properties and afterwards and otherwise I would have stopped regardless of the International Bank and all the money connected with it.

Mr. GALE: Move to strike out the statement of the witness as argument.

The COURT: If the witness knows he took charge of the property at a certain time he has a right to state it and give his reason.

Mr. GALE: Exception.

The COURT (to witness): What objection have you to furnishing that document?

A. None whatever.

335 By Mr. GALE:

Q. What were these anticipated proceedings that rushed you so much in taking possession of that property?

A. Did not rush me; the anticipated proceedings was brought to the knowledge of Mr. Brown by the filing of a suit as near as I can

remember, by the Prosecuting Attorney, or he had heard that suit was going to be brought and he informed me and instructed me to take possession and go collecting those rents which I had at that time.

Q. Just as rapidly as you could?

A. I generally act lively.

Q. Didn't you prepare a notice of appeal in behalf of Francisco Martinez and bring it to the Court of First Instance for the purpose of filing it on the 1st day of December, 1903?

A. According to my docket, yes, sir.

Q. Didn't you encounter your questioner at that time in Court?

A. I did.

Q. And I asked you what you had there?

A. Yes, sir.

Q. And you showed to me your notice of appeal in which you prayed an appeal in behalf of Francisco Martinez?

A. That is correct.

Q. And I asked you if you were not attorney for the International Bank and also for Regidor and the Casa Comision in some matters?

A. You did.

Q. And you answered me in the affirmative?

A. I did.

336 Q. And I told you then that you should not appear as Martinez's attorney did I not?

A. Yes, sir.

Q. And you asked me why?

A. Yes, sir.

Q. And I told you that the Bank's interest and that of Martinez, and Regidor's interests and those of Martinez were shown by the evidence to be contrary?

A. That is correct.

Q. And didn't you tell me at that time that you did not know that the Bank was connected with Francisco Martinez?

A. No, unquestionably no; you may have drawn that inference.

Q. Didn't you tell me that you did not know the Bank had anything to do with Martinez or that there was a question between them at all?

A. I made the statement to you that there would be no objection to my taking the case because the reason I refused to act was because the Bank was interested.

Q. How long previous to this time, December 1st, was it you were employed by Martinez?

A. Well, I hurried my documents up as fast as I could prepare them with the assistance of Judge Lyon, therefore I suppose I was employed the day before I presented them on the 1st of December, according to my docket, or the same day probably.

Q. Do you think it possible with the rush order from the Bank to take possession of Francisco Martinez's property and get possession of it as quickly as possible, after receiving such an order as that,



would you have accepted employment of any kind from the owner of that property in that way?

A. I certainly would not, you have misunderstood my answer; I stated to you that the Bank sent for me and told me to go ahead and take possession of that property and do it at once; now  
337 you construe that as a rush order and I am not responsible. I have had repeated instructions from clients to sue at once.

Mr. GALE: That is all.

Redirect examination by Judge ODLIN:

Q. At the time you took possession of those properties, what was the arrangement between the tenants and the Bank? Were the rents payable in advance or at the end of each month?

A. As I could get them and there was one continual fight at the beginning to make any collection at all, some would pay in advance, the majority paid at the end of the month.

Q. Then there was no fixed, uniform rule established?

A. Absolutely none, some were behind almost two years with their rents.

Judge ODLIN: That is all.

Recross examination by Mr. GALE:

Q. And you went ahead and tried to collect all the back rent for the Bank, didn't you?

A. I did.

Mr. GALE: That is all.

Judge ODLIN: I offer in evidence the testimony taken in this court of the witnesses who testified in Civil Case No. 2230, which was instituted by the Prosecuting Attorney of the City of Manila for the appointment of a guardian for Francisco Martinez, being the same proceeding which has been referred to during the trial of this case by numerous witnesses for the defense.

338 Mr. GALE: Objected to as incompetent, no foundation laid for its admission, and attempt to impeach the witnesses referred to not having called their attention to the contents of the testimony which was proposed to offer it is not the best evidence.

The COURT: I do not think it is competent.

Judge ODLIN: Plaintiff offers the testimony of Francisco Martinez, which was taken in Civil Case No. 2330, this testimony being offered for the purpose of impeachment of the witness, Francisco Martinez, when testifying in this case at bar.

Mr. GALE: Objected to for the reason that no proper foundation was laid for its admission: the witness's attention was not called to the testimony as given by him in that case and it has not been specifically called to any particular portion thereof and he has not denied any specific portion of his evidence given in that hearing.

The COURT: Let the testimony of Francisco Martinez in Case 2230 be admitted.

Mr. GALE: Exception.

The plaintiff rests.

*For the Defense.*

Witness FRANCISCO MARTINEZ recalled.

Direct examination by Mr. GIBBS:

Q. You have stated that these documents signed by you were read and explained to you; state in what condition these documents were, whether they were fastened together or whether they were in loose sheets at the time you signed them?

339 A. There were documents I signed and which were joined together and there were others which were loose sheets.

Q. What did they explain to you as contained in these documents, the sheets of which had not been fastened together at the time you signed your name to them?

A. I was told that those documents contained the credits, I said I do not know about that, give me a copy of them.

Q. Did they give you copies of any of the documents you have signed?

A. No, sir.

Mr. GIBBS: That is all.

Judge ODLIN: No cross-examination.

Adjourned until March 16th, 1906.

Proceedings Held March 16th, 1906.

Same appearances.

Mr. GALE: The defendants offer in evidence as Exhibit 130, statement in writing of Lyon & Wolfson to the International Banking Corporation, accounting for rents collected dated January 13, 1904, showing the first collections of rents from the Martinez properties to have been made December 5th, 1903, showing the amount turned in to the Bank as collected, 708 pesos, and by agreement of counsel it is noted in the record and this note is to be taken as evidence, the statements which are furnished to be returned to the witness, Mr. Wolfson.

Defendants also offer in evidence, letter to Jose Bobles Lahesa, dated November 24, 1903, which is as follows:

340 "DEAR SIR: We beg to enclose herewith a complete list of property acquired by the International Banking Corporation from Francisco Martinez, together with their location, the names of the tenants and amount of rents they are paying and the months for which rent is due.

Each tenant has been verbally notified that in future all rents are payable to the agent of the International Banking Corporation

only. Written notice will be sent them within the next few days and we suggest that you have your representative prepared to collect rents between the 1st and 5th of December, furnishing us with a list of those who refuse to comply with our demand.

Awaiting your further orders, we remain, etc."

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By agreement of counsel the copy of this letter in the stenographic notes is substituted for the original which is returned to Mr. Wolfson.

Defendant offers in evidence, Exhibits 132, and 133, deposit slips of the International Banking Corporation dated Manila, June 5, 1903, and initialed by R. W. Brown and dated December 18, 1903, initialed "R. W. Brown" and Exhibit 133 being slip by which Francisco Martinez's account No. 2 is charged with 708 pesos transferred to L. Oterio on December 18, 1903.

The COURT. There being no objection let them be admitted.

The defense rests.

Evidence closed.

341 I hereby certify that the foregoing is a true and correct transcript of the testimony taken by me in the above entitled case.

CHAS. A. McDONOUGH,  
*Official Reporter.*

342 (Civil Cases Nos. 3363 and 3365.)

*Deposition of Francisco Rodriguez Savaadera.*

Francisco Rodriguez Savaadera, Spaniard native of Madrid, sixty-six years of age, by profession Government official but at present unemployed, states: That he has known Ricardo Regidor for a long time, having lived in the same house with him on Calle Arranque, number 80, for several months in the year 1902: that in the month of February, 1903, he visited Mr. Regidor in his house on Calle Palacio and that on a certain occasion he saw Mr. Regidor talking to a Filipino of advanced age, whose name he did not know; that when the said Filipino left the house Mr. Regidor informed him, the deponent, that he, the Filipino, was a very wealthy old man named Francisco Martinez and that he had been talking to him about a certain business which he had with the said Martinez and the International Bank, the manager of the said Bank having entrusted to him, Regidor, the preparation of a contract under which the Bank was to open a credit of 80,000 pesos: that the said Martinez was an imbecile and unconscious of his acts because of his advanced age, and that he the said Martinez had given many promissory notes and that it would be a paying business if one could learn in whose possession the said notes were so that they might be discounted, and asked the deponent whether he was willing to find out who held the promissory notes issued by Francisco Martinez, other-

wise known as Captain Quico of Balayan and bring the notes to him to see if they could be discounted and that he would give him, the said deponent a percentage of one-half of the profits which might be realized for there was another person interested in this business;

that he, the said deponent, promised the said Regidor to do everything he could, and a few days after he succeeded in

obtaining through another person the list of the names of the

persons who held such promissory notes and the amount of each, aggregating in all two hundred thousand pesos; that Regidor then authorized him to offer up to 33 per cent. of the face value of such promissory notes as he could get; that he expressed to Regidor his fear that he, Regidor, would not be able to pay anything upon the face value of the said promissory notes; that Regidor thereupon informed him that he could go ahead with the assurance that nothing would happen to him for he had the International Bank back of him and that the manager of the Bank was with him in this business; that Regidor, noticing that the deponent doubted his word, told him that if he wanted some proof of his intimacy with the manager of the Bank that he could go to his, Regidor's house on the following afternoon and would find the manager there; that on the following day he went to Mr. Regidor's house and saw Mr. Cantero on the ground floor, who informed him that Regidor was upstairs conferring with the manager of the International Bank; that he, the deponent, remained there talking with Mr. Cantero until about dark when he saw Mr. Regidor come down the stairs accompanied by another gentleman whom he, deponent, did not know; that this gentleman and Regidor were pointing to various places under the house; that when the said gentleman left the house Regidor informed the deponent that he had been consulting with the other gentleman as to the place where they should put the telephone so that they could communicate with each other and that the gentleman in question was 'Mr. Bro-n,' the manager of the International Bank, which the deponent verified later and convinced himself that he had not been deceived; that the deponent then arranged

for an interview with the holders of the said notes and succeeded in getting some of them to accept twenty per cent of the face value of the notes; that deponent then went to the house of Regidor, who informed him that he was waiting for a certain arrangement or compromise that was about to be made between Francisco Martinez and his son and that not until then could he use or make use of the credit of the 80,000 pesos that the International Bank had opened for Martinez, who was to sell to the Bank, on condition of redemption, some of his property and that under the terms of the instrument of sale Martinez would lose his property to the International Bank if upon the expiration of the time agreed he failed to repay the loan of 80,000 pesos; that in view of the fact that he, Regidor, had been advised that the Court had at that time rendered a decision holding that a certain promissory note for 5,000 pesos in favor of one, Saturnina Salazar, was not valid because it was a gambling note, it was his, Regidor's, purpose to secure these

notes at a very low figure by letting the holders of notes signed by Martinez know that if they attempted to collect the notes through the courts he would show that they were gambling notes and therefore absolutely worthless, and that as a favor to them if they did not ask too much he would pay them something for the notes; that it was impossible for the holders to make any direct transaction with Martinez because the International Bank would refuse to pay any check signed by Martinez without his, Regidor's, consent, such being his understanding with Mr. Brown, the manager of the Bank and consequently he hoped to get what he wanted; that deponent was

thereafter informed that Regidor had employed other persons to get these notes, presumably because he thought that deponent because of the revelations made to him would demand a greater share; that a certain note in favor of Gonzalo Reyes and signed by Martinez for the sum of 32,000 pesos, upon which the creditor had already received 9,000 pesos, thus reducing the amount of the note to 23,000 pesos, was discounted through deponent's intervention for 2,000 pesos, which the creditor accepted and the note was indorsed to one Gabriel Smith and signed by Gervacio Garcia and Sebastian Lozano as witnesses and a check was issued to Gonzalo Reyes for 2,000 pesos on the International Bank and another check for 500 pesos for me to tip those who had secured the list of notes and pay the expenses which I had incurred in securing such list; that that was the end of deponent's friendship and relations with Mr. Regidor, the deponent never setting foot inside the Casa Comision which Regidor thereafter established on Isla de Romera in Manila; that later, in the month of March, 1903, deponent called at the house of Francisco Martinez for the purpose of having him acknowledge his signature to a certain promissory note which the deponent discounted; that he and Martinez then had a talk about Regidor, Martinez telling of his misfortune of being under the influence of Regidor, the manager of the International Bank and other people who had him so badly confused that he did not know what he was doing; that deponent then suggested to Martinez that he get a lawyer who could help him out and suggested to him Attorney Ortigas as a very intelligent and honest man; that Martinez approved of this suggestion and asked deponent to speak to Mr. Ortigas

and ask him to take charge of his affairs; that deponent not without some difficulty succeeded in getting Mr. Ortigas to consent to an introduction to Martinez, which deponent brought about, for which Martinez showed his appreciation; that deponent was later informed that Francisco Martinez had wasted Mr. Ortigas' time and that the latter said that he could not understand nor arrive at any satisfactory conclusion with a man whom he considered mentally incompetent; that this is all that deponent can say as to the relations between Francisco Martinez, Ricardo Regidor and the International Bank.

Manila, March 11th, 1906.

(Signed)

FRANCISCO RODRIGUEZ.

Subscribed and sworn to before me this twelfth day of March, 1906.

(Signed)

R. HERAS,  
Assistant Clerk of the Court of  
First Instance, Manila, P. I.

347 THE UNITED STATES OF AMERICA,  
Philippine Islands:

In the Court of First Instance, City of Manila, Part III.

Case No. 2230.

In the Matter of the Application for the Appointment of a Guardian  
for FRANCISCO MARTINEZ, an Incompetent.

Appearances:

For petitioner, Herbert D. Gale, Esq., Ass't Prosecuting Attorney.  
For respondent, Messrs. Early & White, and Firman Mariano,  
Esq.

FRANCISCO MARTINEZ, a witness for the petitioner, being called  
and duly sworn, testified as follows:

Direct examination by Mr. GALE:

Q. What is your name?

A. Francisco Martinez.

Q. How old are you?

A. 66 or 67.

Q. Where do you reside?

A. Calle Levasario, San Nicolas, No. 66.

Q. How long have you resided in Manila?

A. Four years, more or less.

Q. Where did you reside before coming to Manila?

A. Calle Civilia, here in Manila, first I lived with my son.

Q. How long did you live at Calle Civilia?

A. Over a year and a half.

Q. Where did you live before living in Calle Civilia?

A. I lived first with my son.

Q. Did you ever live in Batangas Province?

A. Before, yes; I am a native of Balayan, Province of Batangas.

Q. When did you come from Batangas to live in Manila?

A. Four years ago, more or less.

Q. What property do you own in Manila?

A. I think it is over 600,000 pesos, but my son is holding them.

Q. How many different pieces of real property are there?

A. More or less, 40 houses.

Q. How much rent do you receive per month from these 40  
houses?

A. Well, we divided already the estate between my son and my-  
self; it is over five months ago that we divided our property.

Q. How much property have you left after dividing your property?

A. More or less, 300,000 pesos, we did not divide the property in Balayan.

Q. How many different pieces of property have you got in Manila, after the division, belonging to you?

A. I do not know if it is 20, it must be more or less 20 pieces.

Q. How much rent do you get from those 20 pieces of property in Manila?

A. Less than 3,000 pesos per month.

Q. How much less than 3,000 pesos?

A. I cannot tell you how much less, sometimes it is more than 3,000 pesos and sometimes it is less, because sometimes the houses are empty.

349 Q. Down to five months ago when you made a division of the property with your son, you collected the rents didn't you?

A. When it was not divided I used to collect the rent of all for about a year, but prior to that time my son collected for about three years.

Q. During the year that you collected the rents for all this property, how much did your rents amount to per month for all the property?

A. Over 5,000.

Q. How long have you owned these 40 or 50 pieces of property in Manila that you have?

A. Over 12 years ago.

Q. Do you own any boats, any steamboats or sailing vessels?

A. Yes, sir.

Q. How many?

A. Three steamers and two schooners.

Q. What are those boats doing, what are you doing with them?

A. Travelling around the coast.

Q. What are they engaged in, coastwise trade in the Philippines?

A. Yes, sir.

Q. How long have you owned those boats?

A. About 12 years, more or less.

Q. Have they been making regular trips during the last two years?

A. No, sir, the same as the schooners now, they are not engaged in any trade but coastwise trade.

Q. Do the steamboats engage in trade?

A. Yes, sir.

Q. Where do they go?

350 A. To the province of Batangas, Lucena.

Q. What are they doing, engaged in freight and passenger carrying?

A. Yes, sir.

Q. How many trips a month does each one of those boats make?

A. Two trips in a month.

Q. What is the average profit on each trip?

A. Sometimes over a thousand and sometimes less than a thousand, after taking the expenses off.



Q. Each steamer?

A. Yes, sir, not always, sometimes it makes that amount and sometimes less.

Q. What is the average profit per trip of each boat for the last one or two years?

A. Sometimes after taking off all the expenses which might be required for the steamer it might leave 6,000 pesos profit each and sometimes when there is a good trip and profit each and sometimes *when there is a good trip* and each vessel makes a thousand and sometimes more and sometimes less according to the cargo and freight carried on each trip.

Q. How long have you been managing these three steamers yourself?

A. I own those boats; I bought them and I have the control of said boats since the death of my wife but I have allowed my son to intervene in the collection of the moneys.

Q. Who has been collecting the profits or money from the boats?

A. When do you mean?

Q. In the last two years?

A. Myself.

Q. How many pieces of property have you in the Pueblo of Balayan, Province of Batangas?

A. About 600,000 pesos.

Q. How many different houses have you there?

A. 5 houses and plenty of warehouses.

Q. These five houses, are they of strong material or not?

A. Strong materials.

Q. And during the last two or three years who has been renting these houses?

A. Before the Americans who did not pay, nothing now since the arrival of the Americans.

Q. Have you collected your rents from any of those buildings yet?

A. No, sir.

Q. You have a claim then against the Military Government for the rent of those houses now then, have you not?

A. Yes, sir.

Q. During the last three years have you gotten any income from those houses or warehouses?

A. The reason why I was unable to collect was on account of my son who intervened in the matter and stated to the people that he had an interest in the buildings, that he owns the buildings and that is the reason I cannot collect them.

Q. How much farm property do you own in Batangas?

A. Big, sir.

Q. How much is it worth?

A. Very big.

Q. Can you tell how many hectares there are?

A. I cannot tell.

Q. Do you know what its money value is or very near?

A. My capital to it when I bought same is about 600,000 pesos but now it is more than that.

352 Q. Is any of the farm property being worked now, and crops being put in?

A. Some of them are planted and are under the management of my grandson, the son of Pedro.

Q. What is the value of these three steamboats?

A. Over a hundred thousand pesos.

Q. What is the value of the two steamers?

A. About 8,000 pesos more.

Q. How much are you indebted to the International Bank for?

A. I think it must be over a hundred thousand.

Q. How long ago did you commence to borrow money from that bank?

A. It is on account of my son filing suits against me that I become vexed with him and that is the reason why I began borrowing money from the bank.

Q. But how long ago was the first that you borrowed money from the bank, how many months?

A. I do not know, it might not be a year yet but I think that it is more — less a year.

Q. How much is the actual amount that you owe now to the International Bank, the actual amount, how much is it?

A. I cannot tell; I do not know.

Q. You know that it is 100,000 pesos at least, don't you?

A. To my guess it is over 100,000 pesos.

Q. What security did you give the International Bank for this loan?

A. My property which belongs to me.

Q. All that belongs to you?

A. All.

353 Q. And how was this property transferred, by mortgage or by regular deed?

A. Mortgage.

Q. Do you mean all the property which you own in Manila, or the property you own in Manila and Batangas both?

A. Only what is in the town of Manila.

Q. Not the property in Batangas?

A. No, sir.

Q. How about the boats, were they transferred to the bank too?

A. Mortgaged too.

Q. To the bank?

A. Yes, sir.

Q. How much do you owe outside of the bank at the present time in Manila?

A. But little.

Q. Do you know Senor Ortigas, the lawyer?

A. I know him.

Q. He holds a number of your notes, don't he?

A. I do not know.

Q. About \$60,000 Mex. isn't it that he holds of your notes?

A. Yes, those that have been already litigated.

Q. Then Fibbs & Kincaid, do you know that firm?

A. Yes, sir.

Q. They hold a number of your notes for collection don't they?

A. I do not know whether they do or not.

Q. About 80,000 pesos they hold, don't they?

A. No, sir.

Q. About how much is it?

A. I do not know, sir; I have no knowledge of it; I think it is a gambling debt.

Q. How many notes have you give in the last year for gambling?

354 A. I do not know.

Q. Well, is it 200,000 pesos?

A. No, sir.

Q. 100,000 pesos?

A. As I said for gambling, it must be more than that.

Q. How much have you lost altogether during the last year or the last year and a half in gambling, altogether, notes, etc.?

A. Money, very little; but notes, very many.

Q. About how much in notes?

A. The notes what I lost in gambling I do not count that there is any money affected.

Q. How many orders (that is not money) but how many orders have you given on jewelry stores in the City of Manila to gamblers that you have lost money to?

A. Well, I paid little by little the notes.

Q. Haven't you given orders on jewelry stores,—Estrella del Norte, Blanco & Co., Ullman & Company and other jewelry stores on the Escolta—a great many of them, for jewelry in the last two years?

A. I think I gave one in each place.

Q. Have you not given orders on Gasterino and Moreno for carriages?

A. No, sir.

Q. What was the suit of Ortigas against you in the Court of First Instance, what was that suit about?

A. Gambling debt.

Q. How much was that for, do you remember?

A. No, sir; I have been buying those notes very cheap.

Q. How much was the note for originally, what was the amount of it?

A. I do not remember now, I forget.

355 Q. What was the suit of Anna Ceson in this Court for?

A. I have settled that already; I have paid very little.

Q. What was the suit for?

A. Gambling debt.

Q. Do you know how much that note was for?

A. I forget now the amount.

Q. Do you remember how much you paid for it?

A. I think it is 500.

Q. What was the suit of Francisco Rodriguez against you for in this court?

A. Gambling, too.

Q. How much was that for?

A. I forget how much.

Q. What was the suit of Pascual Polette for?

A. Gambling.

Q. How much was that for?

A. As I say I do not remember now.

Q. Did you gamble with Polette?

A. Yes, sir.

Q. What was the suit of Papa for in this suit?

A. Also gambling.

Q. Do you remember how much that was?

A. I cannot remember; he did not file a complaint against me; I think they tried to file a suit but they withdrew that suit.

Q. What was it about the one they tried to file?

A. I cannot tell.

Q. What was it for, gambling or something else?

A. Gambling.

Q. What was the case of Faustino Lichaueco against you?

A. Gambling.

356 Q. Do you remember how much it was for?

A. I do not remember the amount, but it is very large.

Q. What was the case of Geronimo Duseppe against you for?

A. As I said, all gambling.

Q. What was the case of Gabino Tanyungquip for?

A. It is for a note.

Q. For gambling?

A. Yes, sir.

Q. What are the three cases of the Pacific Oriental Trading Company against you for?

A. Goods and merchandise sent to the provinces.

Q. How much does those claims amount to of the Pacific Oriental Trading Company?

A. I think it is over 2,000 Mex., but I have already paid some on that amount.

Q. What was the suit of the American Commercial Company against you?

A. Beer and merchandise sent to the provinces.

Q. And you have had seven different suits with your son Pedro haven't you?

A. Yes, sir.

Q. According to your statement, during the past year you received approximately 60,000 pesos of rents from your property in Manila, you received approximately 24,000 pesos profit from your boats and you received approximately 100,000 pesos according to your statement from the bank, now where is all that money, 184,000 pesos; what did you do with it all?

A. You cannot consider all that as profit, taking into consideration some of the repairs to the houses and steamers.

357 Q. Well, what houses have you repaired?

A. Those houses?

Q. Which houses?

A. The houses and steamers.

Q. Well, the houses Nos. 31-36 Calle Barcelona, how much have you paid out on them for the year past for repairs?

A. I have the account, but not in my head.

Q. Where is your account?

A. It is in the Court.

Q. What court?

A. Because my son is asking for the account and it must be in the court.

Q. Have you spent anything on that houses at all, on Calle Barcelona?

A. Yes, sir.

Q. How much?

A. I do not remember, it is in the account.

Q. Have you put any repairs on it in the last year on that house?

A. Which one?

Q. The house we are talking about on Calle Barcelona and Jabe-

neras?

A. Yes, sir.

Q. How much?

A. I cannot tell you, it is in the account.

Q. Do you keep any books?

A. Yes, sir.

Q. Where are they?

A. Some in the Court and some in my house.

Q. Who keeps those books for you?

A. I have clerks.

Q. Who are they?

358 A. Sisenando, Tibursio and Benito.

Q. Where are these men, at your house?

A. One of them stays there.

Q. Which one?

A. Tibursio.

Q. How much of this amount which you owe the International Bank was used by you in paying these gambling notes?

A. Very little; part of it has been used in the repairs of the steamers, because when my son delivered to me the estate and the steamers they all needed repairs so I had to pay money for repairs.

Q. How much are the repairs to the steamers?

A. It is more than 50,000 pesos.

Q. When were those repairs made to the steamers?

A. In the slip dock at Cavite.

Q. When were they made?

A. This year past, some of them were repaired here at San Miguel.

Mr. GALE: That is all I desire from this witness at this time,

if the Court please, but I wish to reserve the right to recall this witness later.

The COURT: Certainly.

Cross-examination by Mr. MARIANO:

Q. Did you contract any obligation with Mr. Ortigas?

A. None.

Q. Have you ever been compelled by the court to pay some of the notes that you have issued in gambling?

A. No, sir.

Q. Did you render any account as administrator in the last year for your estate?

359 A. Yes, sir, in regard to the steamer Balayan I did not render any account; it is already finished but has not been filed yet.

Q. Did you contract any obligations with Messrs. Gibbs — Kincaid?

A. No, sir.

Q. Your account as administrator for this year, is it in the hands of the Court?

A. Yes, sir, they are in Court.

Q. What have you been doing with the money taken from the International Bank?

A. Some of it for expenses of the ships and some for expenses of the houses and part of its payments of notes in small amounts.

Q. How much do you think is the amount paid for the notes?

A. Very little; sometimes when a note is for 10,000 I give only 100 pesos, so it is very small.

Q. Did they agree to take 100 pesos for 10,000 pesos?

A. Yes, sir.

Mr. MARIANO: That is all.

Redirect examination by Mr. GALE:

Q. What percent interest do you pay on your indebtedness to the Bank?

A. 8%.

Q. When did you commence gambling?

A. After the death of my second wife and also at the time when my son filed a suit against me.

Q. That was about a year ago, wasn't it?

A. Yes, sir, about a year ago, but I do not gamble now.

360 Q. When did you have your last law suit?

A. About six or seven months ago now that I did not gamble. I do not remember the date when I stopped gambling but it is six or seven months ago.

Q. So you lost this 100,000 pesos in about six months, did you?

A. No, sir; if it is in notes, there are plenty, but cash money very little.

Q. Well, how much notes and how much in cash, approximately?

A. I think about 40,000 pesos cash; in notes I cannot tell you but it is plenty.

Q. It is about 200,000 or 250,000 in notes isn't it?

A. Plenty, but the payment of it is very small.

Cross-examination by Mr. WAITE:

Q. When did your second wife die?

A. Over a year and a half ago.

Q. You said that it was just after her death that you began gambling?

A. Since the death of my wife and also on account of the trouble with my son and three children of mine died too.

Q. It was these troubles of yours, then that started you out gambling, was it?

A. Yes, sir, that is the commencement of my gambling; I am not a gambler by profession.

Q. Had you gambled as a matter of custom before that, had you previously been a gambler?

A. No, sir.

Q. And for six or seven months you have not gambled at all?

A. Yes, sir.

361 Q. You may have lost 40,000 pesos in cash?

A. Yes, sir, I think so.

Mr. WHITE: That is all.

Redirect by Mr. GALE:

Q. How much did you owe at the time your second wife died?

A. I did owe something because I bought three houses.

Q. You owed some of the payment on three houses?

A. I bought three houses and part of the payment of these houses I had borrowed.

Q. How much was that?

A. About or more than 50,000 pesos, I bought three houses.

Q. When did you pay that 50,000 pesos?

A. Part of that money I got from the bank and I paid the part of the loan which I got on the houses that I bought.

Q. Which three houses were they?

A. Calle Lemaray and two houses on Calle Aranque.

Q. Was that all you owed at that time?

A. Yes, sir.

Q. Did you have all this property at the time your second wife died?

A. When my first wife died all these properties belonged to me already.

Q. Did you have it all when your second wife died?

A. Yes, sir, that is the reason we have been dividing with Pedro; his share I gave it to him.

Q. When your second wife died, did you have any money in the bank?

A. When my wife died I did not have any money in the bank.

Q. Did you have any money due you from other persons?

A. Yes, sir.



362 Q. How much approximately?

A. Over 300,000 pesos.

Q. Has any of it been paid?

A. No, sir not yet.

Q. None of it paid?

A. No, sir it is in the provinces and now my son Pedro he says that money is his and he also says the houses belong to him, too.

Q. During the last year since you established your credit at the International Bank, have you deposited any money in the International Bank to your account?

A. No, sir.

Q. Do you keep an account at that bank or the Spanish-Filipino Bank?

A. No, sir.

Q. Where do you keep your money?

A. How do you want me to keep money when I am owing some people yet?

Mr. GALE: That is all.

Mr. MARIANO: That is all.

The COURT: That is all.

363 FRANCISCO MARTINEZ recalled for the petitioner.

Direct examination by Mr. GALE:

Q. What was the payment of 5,000 Mexican to Senor Azeola? Thee payment on the 20th of May by you by check?

A. That is his payment for drawing up the deeds and other notarial documents.

Q. In what transaction?

A. To put in proper shape all those titles to my property.

Q. That is, you mean the transfer to the bank?

A. Yes, the transfers to the bank and also the division of the property between my son and myself.

Q. Mr. Azeola was your attorney in that matter was he?

A. In the partition, yes, I gave him authority to make the partition.

Q. You also gave Mr. Cantera authority, didn't you?

A. Yes, sir.

Q. And Mr. Azeola charged you 5,000 pesos for these transfers to the bank and drawing the agreement of partition between yourself and your son?

A. Yes, sir.

Q. Well, you have had Mr. Azeola for your attorney, Mr. Cantera for your attorney, Mr. Caldron for attorney, Mr. Ortigas, Messrs. Early & White, and Mr. Firman Mariano; have you had any other attorneys besides those?

A. Mr. Ortigas has never been my attorney.

Q. You have consulted him, haven't you?

A. No, sir, he sent for me.

Q. Have you had any other attorneys besides those named?

364 A. No, sir, I have not had any other attorney, neither Mr. Cantera or Mr. Azcola for my attorneys, they were simply in charge of the partition.

Q. Was Mr. Regidor your attorney?

A. No, sir.

Q. Why did you give a general power of attorney to Mr. Cantera in February?

A. On account of the partition of my property, the houses and property and also there was some business of mine that I wanted him to transact.

Q. Well, the division of the property between yourself and your son was made in Court, wasn't it?

A. The consultation was made first to the Court.

Q. Who else has a general power of attorney besides Mr. Cantera?

A. Nobody else, I have given a power of attorney to nobody else.

Q. Did you ever give a general power of attorney for the collection of rents?

A. Yes.

Q. Who was that to?

A. Siseando the man who testified here yesterday.

Q. Is that general power of attorney for the collection of rents alone?

A. Yes, to look after the suits to be filed against the tenants.

Q. What is the power of attorney you gave to Mr. Calderon?

A. For the law suits.

Q. What is the power of attorney you gave to Firman Marino?

A. Just the same as the one I gave to Mr. Calderon.

365 Q. What other powers of attorney have you given besides that?

A. No more.

Q. When did you become acquainted with Senor Cantera?

A. I believe it is more or less about a year or 8 months.

Q. And how did you become acquainted with him?

A. I became acquainted with him by the house of Mr. Regidor.

Q. Do you know anything about the financial condition of Mr. Cantera when you became acquainted with him?

A. I do not know anything about that; I have never conferred any power of attorney *do* that he might draw any amount of money belonging to me.

Q. You do not know then that the power of attorney you gave to Mr. Cantera was a full and complete power of attorney by which you gave him full control of your property and the right to transfer your property and collect the rents?

A. I did not know that it was such.

Q. In making these various papers in Mr. Azcola's office, by which you secured the bank, do you know you were making an absolute transfer of your property in every instance to the bank?

A. I know it.

Q. Now, will you state for what purpose you paid the 3,000 pesos on February 11, to Ricardo Regidor?

A. I have never paid him any sum of money, we together got some money from the bank.

Q. For what purpose?

A. For the purpose of spending money.

Q. Who spent it?

A. I did.

Q. Why was it necessary to have Mr. Regidor with you to  
366 get this money to spend?

A. Because he is the man who the manager of the bank consults about me.

Q. And you cannot draw any money from the bank without Mr. Regidor's consent?

A. Yes, sir.

Q. Do you mean that you cannot draw any or what?

A. Yes, sir, I cannot draw any money from the bank unless the bank asks from Mr. Regidor whether they can pay me any sum of money or not.

Q. What do you have to pay to Mr. Regidor for this service?

A. I do not pay him anything.

Q. Will you explain why it is that, notwithstanding you have transferred all of your property to the bank to secure the credit they have extended to you that you must have Mr. Regidor's consent before you can draw any money on that credit?

A. That is the way I know how to get money from the bank.

Q. But why is it necessary to get Mr. Regidor's consent?

A. Because he is the man that the manager of the bank consults about me.

Q. Did Mr. Regidor assist you in getting this credit at the bank?

A. Mr. Regidor is the man who told the bank about this credit.

Q. Now, will you explain what were these three checks of 1,000 each are, or for what reason they were drawn by you to the order of Mr. Regidor on the 11th of February?

A. I wish to see those checks so that I may be able to state; (hands witness checks); this is money loaned to Mr. Regidor.

367 Q. Have you any notes for it?

A. Yes, sir I have.

Q. State what is your security?

A. No, I have no security.

Q. Where are those notes?

A. That document is in my house.

Q. What is that check of \$5,000 on March 8th given for?

A. All the checks where my signature appears shows that I have drawn that money from the bank.

Q. But what was that check given for?

A. This is money I got for the steamers and the houses.

Q. What was that 5,000 pesos spent for?

A. I cannot tell you.

Q. What is this check of April 21 for 2,000 endorsed by Manuel Romero, what is that for?

A. Well, I got this money from the bank; probably I sent this man to get the money for me.

Q. Who is Manuel Romero?

A. He is a person from Valayan.

Q. Is he in Manila now?

A. Yes, sir.

Q. Who is Y. F. Martinez?

A. Ysidor Martinez.

Q. Is he a relative of yours?

A. He is my cousin.

Q. Have you ever had any business transactions with him?

A. Yes, sir.

Q. Ever owed him any money?

A. Yes, sir, sometimes he loans me money and sometimes borrows money from me.

368 Q. Does he owe you any money now?

A. No, sir.

Q. What was the payment of 1,000 pesos to Ysidor Martinez on the 30th day of January for?

A. That is money that I owed him.

Q. What for?

A. I cannot remember what.

Q. For gambling?

A. No, sir.

Q. Is that the only sum of money you paid him recently?

A. I cannot tell you, I can't remember; I do not keep it in my memory.

Q. What was the 3,000 pesos paid for to him on February 3rd?

A. Because sometimes I get money from him and sometimes he gets money from me.

Q. What was that 3,000 pesos for?

A. Well, probably money that I have taken from him.

Q. You do not know what it was for?

A. I cannot remember.

Q. Who is Gregorio Ramos?

A. I do not remember now who he is.

Q. Do you know what that check endorsed by him for 1,000 pesos was for dated the 2nd of September?

A. I do not recall now, I forget it, it is long but so long as my signature appears there it shows that I have taken the money; I cannot tell you who this person is because I do not keep them in my memory.

Q. Who is Pilar Carreles?

A. This is the thing; whenever I owe any money to a person I give a check to the person who collects that money from the bank and they make him sign on the back of the check.

369 Q. Tell me what that check of 2,000 pesos of February 3rd was which was signed by Pilar Carreles?

A. This is, supposing I gave you a check in payment of my debt and you sent that check for collection to the bank by another person and the bank makes that person who receives the money sign on the back of the check.

Q. Who did you give that check for 2,000 pesos to, and do not give checks for 2,000 pesos without knowing who you gave it to do you?

A. I cannot remember because this is a long time ago; this is the person who got the money from the bank and the bank makes that person sign his name on the back of the check.

Q. Do you know the employer of Mr. Cantera?

A. I do not know, I saw him going to the house of Mr. Regidor.

Q. Where is the house of Mr. Regidor?

A. Before he used to live here in the Walled City.

Q. Where does he live now?

A. On Islas de Romero.

Q. Did you ever see Pilar Carrelles there at the house?

A. I forget.

Q. Do you know if he is a person who employs Mr. Regidor?

A. No, sir, I do not.

Q. What was the payment of 1500 pesos local currency to Senot Regidor on the 5th of February?

A. Well, sometimes he gets money from me and sometimes he gives me money.

Q. How much does he owe you now?

A. I do not know.

Q. What was the payment of 4,000 to Ramon R. Papa for on April 20th?

A. This is on account of gambling.

370 Q. Did Papa win that amount from you?

A. Yes, sir.

Q. What is this check for \$5,250 for on the 21st of April, what is that for?

A. I do not remember.

The COURT: Who is that endorsed by?

Mr. GALE: It looks like "P. Crouse" I am not sure.

Mr. GALE:

Q. Did Mr. Cantera ever sign any checks for you on the International Bank?

A. No, sir.

Q. Sure about that?

A. Yes, sir, I am sure.

Q. How about this check which I show you?

A. Well, if my signature does not appear upon this check it is not mine; I do not recognize this check.

Q. You did not know that Mr. Cantera was signing any checks for you on the Bank, then?

A. No, I did not.

Q. Do you know what that 5,000 pesos was for that Mr. Cantera drew on that che-k? (che-k No. 27280).

A. I do not know.

Q. Do you know the name of the person who endorsed "Louisa Perez"?

A. No, sir, I do not know. And if the signature does not appear my signature, I do not recognize that check as mine.

Q. What is this certified check of 3140 on the 27th of March what is that for?

A. If my signature appears there is is my check; it is my check.

Q. What is it for?

371 A. I cannot remember those details because I do not keep in my memory all the checks I draw.

Q. And what is this check made for 9,000 pesos made non-negotiable and drawn on the 16th of February?

A. This is for redeeming the property which was mortgaged.

Q. These houses on Calles Aceyteros and Ezpeleta?

A. Yes, sir.

Q. What was the amount of the total encumbrance on that house?

A. 9,000.

Q. And that was all there was due on that house, all you had to pay on that house?

A. No, sir, I paid together all my credits.

Q. So that all the mortgage there was to pay on that house was 9,000 pesos?

A. In the bank.

Q. No, the amount that you had to pay to redeem it, that you got from the bank?

A. Yes, that is the only amount.

Q. Is this check for 9,000 pesos was to pay the encumbrances on that house, how is it that the bank has got you charged in a special account with that 9,000 pesos as having paid that particular mortgage for you?

A. What special account?

Q. The bank have you charged specially with 9,000 pesos used to pay off a mortgage for you on this house on Calle Aceyteros?

A. Yes, sir.

Q. Then, how does it happen that you draw a check for 9,000 pesos too and have that charged to you by the Bank?

A. That is the only amount to redeem that property.

Q. You are sure that that check for 9,000 pesos was the money paid by you to redeem that property?

A. Yes, sir.

372 Q. Do you know a person by the name of F. A. Robinson?

A. I would like to see the signature (witness shown check) this is like that if I hand you a check and you send some one else to collect the money from the bank and the bank would require you to sign on the back of the check.

Q. What was that check for 3300 drawn for? It is dated the 11th of March?

A. I do not recall, I do not remember it. Would you be able to remember and keep track in your memory of all the checks and all the amounts that you have paid, supposing you were in my place?

Q. What was this check of 4,000 pesos drawn for, dated January 20, 1903?

A. This is my debt to the bank.

Q. What did you owe the bank for?

A. Sometimes for expenses for my houses, sometimes for expenses for the ships and sometimes for expenses for litigation.

Q. What has be-ome of the jewelry that you formerly had?

- A. It is in pawn yet.  
Q. Where is it?  
A. With my son.  
Q. Where is the jewelry you had yourself that your son did not have?  
A. I pawned it.  
Q. With whom?  
A. In the bank.  
Q. Which bank?  
A. I handed it to Mr. Regidor; first I put it in the pawn shop and then Mr. Regidor redeemed it.  
Q. What was that jewelry worth?  
A. About 5,000.  
373 Q. Where is that jewelry now, who has it?  
A. It is in the pawn shop.  
Q. Is it still in Mr. Regidor's possession?  
A. No, sir.  
Q. When did you get it back from Mr. Regidor?  
A. Long time ago.  
Q. What pawn shop is it in now?  
A. It is in the pawn shop of a friend.  
Q. What friend?  
A. A woman.  
Q. What is her name and where is she?  
A. Donna Carmen.  
Q. Where does she live?  
A. Bride of Chinesco.  
Q. Where is that?  
A. Santa Cruz.  
Q. Is that the same Donna Carmen who sued you for a gambling debt?  
A. No, sir.  
Q. How much money did she advance you upon this jewelry?  
A. 4,000.  
Q. And Senor Regidor has not any of your jewelry now?  
A. No, sir.  
Q. And the bank has none?  
A. No, sir.  
Q. What is this 3,000 pesos check for endorsed by E. Paterno and dated January 20, 1903 No. 24001?  
A. I do not know now for what because I have forgotten.  
Q. Did you ever owe Mr. Paterno anything?  
A. No, sir.  
Q. What was the note which you settled up with the bank on the 10th of July for 20,250 pesos?  
374 A. Kindly show me the check so that I may remember (witness given paper); where there is anything where my signature does not appear I do not recognize it.  
Q. Don't you recall having had a transaction with the bank on the 10th of July in regard to a 20,000 note?  
A. No, sir, I did not sign that paper.  
Q. You stated yesterday that you owed the bank about 100,000



pesos and the representatives of the bank have testified that you owed it 190,000 pesos, how do you explain that?

A. I did not fix the amount to be 100,000 as I had not settled my account with the Bank yet.

Q. But you stated that you thought it was about 100,000, didn't you?

A. If my signature appears there of course I admit it, but if my signature is not there I do not admit it to be my debt.

Q. How much cash did you actually receive from the bank during the last year?

A. All those checks are cash money.

Q. Do you know that you owe the bank 190,000 pesos?

A. I do not know sir, we will settle.

Q. You do not know whether you owe them 100,000 pesos or 190,000 pesos, do you?

A. We have not settled our account.

Q. You do not know then?

A. I do not know; I have more credit yet in the bank.

Mr. GALE: That is all.

375 Cross-examination by Mr. WHITE:

Q. How did you become acquainted with Mr. Cantera?

A. I knew him in the house of Mr. Regidor.

Q. Who introduced you to that gentleman?

A. Nobody, I became acquainted with him in the house of Mr. Regidor.

Q. Why did you authorize a power of attorney in his behalf?

A. On account of my belief in Mr. Regidor.

Q. Are these the papers authorized by you in favor of Mr. Cantera in the house of Mr. Regidor; examine them carefully and state whether they are or not? (hands witness papers).

A. This one I signed I admit it.

Mr. WHITE: If the Court please, that is a letter dated Feb. 7th, 1903, and acknowledged before Mr. McMicking the clerk of the Court of First Instance and addressed to Mr. Cantera.

Q. Now, this document dated February 7th and this document dated the 20th of February, 1903, did you also sign that?

A. Yes, sir.

Q. That was attested by Vicente Azeola, Notary Public, was it not?

A. Yes, sir.

Q. Now this document dated the 10th of March, 1903, this was executed before Francisco Ortigas, the registrar of titles in favor of Don Pedro Cantera, did you authorize such a document as that?

A. If my signature is there I admit it.

Q. Did you know the contents, or have you ever known the contents of this alleged power of attorney to Pedro Cantera dated 376 the 20th of February, 1903?

A. I gave him that power of attorney.

Mr. WHITE: That is all.

The COURT: That is all.

377 FRANCISCO MARTINEZ, the respondent, called in his own behalf.

Direct examination by Mr. MARIANO:

Q. How long have you been gambling?

A. About 5 or 6 months.

Q. Do you continue gambling up to the present day?

A. No, sir.

Q. When did you cease gambling?

A. About 7 or 8 months ago.

By Mr. WHITE:

Q. Do you want to make any statement to the Court by way of explanation or give any other reason why a guardian should not be appointed?

A. I want to state and I want to know who are the parties who gave this information to the Prosecuting Attorney; I believe he has some interest and that is the reason he made this information to the prosecuting attorney; nothing more.

Q. Have you any explanation to make in regard to the gambling as to why you started in to gamble as you did for the six months that you were gambling?

A. I was disgusted with my son because he brought suits and also on account of the death of my wife and that is the reason; I am not a vicious man, not a professional gambler; that is all I wish to say.

Mr. WHITE: That is all.

The COURT: That is all.

Defendant Rests.

378 FRANCISCO MARTINEZ recalled by the Court:

By the COURT:

Q. Who do you want to be your guardian?

A. Mr. Green.

Q. Why do you want him?

A. Because he will pay me.

Q. What do you mean by "he will pay you?"

A. Our agreement that he will pay the bank and also pay Mr. Regidor.

Q. What do you owe Mr. Regidor?

A. I told him that we would settle our account.

Q. Told whom?

A. I stated to the Court last time when I was called and questioned here that my debt to the bank was a hundred thousand pesos, but I would settle first my account for I found out how much exactly it was that I owed the bank.

Q. Do you say that Mr. Green says that he will pay the bank and also Mr. Regidor?

A. Yes, sir, he told me that he would pay those two parties, Mr. Regidor and the bank.

Q. What do you owe Mr. Regidor?

A. What I owe in the bank is through Mr. Regidor, that is the reason I say I owe Mr. Regidor, because it was through him that I obtained the credit and money from the bank.

Q. Would anybody else suit you for guardian but Mr. Green?

A. I do not know him very much but he told me that he  
379 would pay that debt of mine to the bank by selling some of my property.

Q. How long have you known him?

A. Only now a little, being the man who promised me that he would try and pay the amount of mine in the bank and pay the debt of the bank.

Q. How did you get acquainted with that Mr. Green?

A. I know him only now a little and furthermore I have seen him many times and he promised me that he would pay that debt of the bank.

Q. What has Mr. Green been doing, what business has he been engaged in?

A. I do not know sir, only he promised me that, because if others may be appointed for my guardian, I do not think that they will pay what I owe in the bank and Mr. Green will pay what I owe in the bank.

Q. Is there any one else whom you would want for a guardian?

A. I do not know anybody else but that is the gentleman with whom I had a conversation and had an agreement that he would pay to the bank. If you do not believe that you had better send for Mr. Green and ask him.

By Mr. GALE:

Q. When did you have this conversation with Mr. Green in which he promised to pay this indebtedness to the bank?

A. Only these few days.

Q. When was it, after the trial of this case in Court or before?

A. Before the trial of this case.

By Judge KINCAID:

Q. How would you like to have Mr. Jones of the Hongkong Bank for guardian?

A. I had an agreement with Mr. Green; you might call Mr. Green.

380 Mr. GALE:

Q. Where was this conversation had with Mr. Green, where was the conversation held?

A. In his office.

Q. How did you happen to go to his office?

A. Before when I did not have any trouble yet here. You might bring him here, that gentleman.

Q. Do you know whether Mr. Green has any property or money or not?

A. I do not know but he told me that he would pay.

Q. Do you know whether he is a good business man or a poor one?

A. Now, sir, but I guess he will pay what I owe in the bank.

Q. Do you want all your property sold to pay this indebtedness in the bank?

A. No, sir only what is sufficient to cover it, that indebtedness of mine in the bank.

The COURT:

Q. Did the Mr. Green you talked with represent to you that he was connected with any one of the banks here?

A. I do not know sir, but he told me he would pay; ask him here in court, if you doubt it.

The COURT: That is all.

4.

EXHIBITS—CASES NOS. 3471 & 3472.

THE INTERNATIONAL BANKING CORPORATION

VS.

FRANCISCO MARTINEZ AND VICENTE ILUSTRE, His Guardian.

1 PLAINTIFF'S EXHIBIT "A" (Case No. 3365).

Instrument of June 15th, 1903, attached to plaintiff's complaint.  
See p. —, record case No. 3472.

2 PLAINTIFF'S EXHIBIT "A" (Case No. 3363).

Instrument of May 2nd, 1903, attached to plaintiff's complaint.  
See p. —, record case No. 3471.

3 PLAINTIFF'S EXHIBIT B.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, to all to whom these presents shall come, make known that I hereby grant and confer my personal representation and my special powers as ample as may be necessary in law upon Pedro Cantero Enriquez of Manila, to settle all my affairs with my son, Pedro Martinez, by compromise upon such terms and conditions as he may deem expedient, to intervene in the partition of the property belonging to the conjugal partnership of Martinez Ilustre, and to administer and manage the same, for which management he shall receive a commission; to settle and pay all claims whatever of my creditors, and for this purpose to issue in place of the documents of credit which they may hold, such promissory notes or obligations as he may deem pertinent, upon the terms and conditions which he may consider proper, and I hereby promise to accept and consider as valid whatever payments he may make, or whatever acts he may execute under and by virtue of this authority; to represent my person, rights and actions; to administer, control and manage all the property belonging to me, which he may lease for the time and under the terms and conditions which he deems advantageous; to collect the rents and products, eject tenants whenever he deems proper, and to act generally as a zealous and intelligent administrator, provided however that this shall not interfere with the power of administration which I have conferred upon the International Banking Corporation with regard to the property pledged to said Bank; to demand collect and receive all and any amounts which may be due or may become due to me, either in cash, values, or goods, upon contract or otherwise, and for the sum or sums thus received and collected, to issue such receipts, acknowledgments of payments, and such other documents as may be proper, canceling partially or totally all mortgages and executions

which may exist or may have been levied upon the property of my debtors or their sureties; to compromise and compound, either in favor or against me, whatever actions or rights I may have under the terms and conditions and in such form as he may deem most advantageous, and for this purpose he can submit his decision, if he sees fit, to arbitration; and he is hereby empowered to appoint such arbitrators by a proper instrument, which he shall execute and sign with all the necessary requisites, setting forth in the said instrument all that may be required by the nature of this class of instruments, and any other special conditions he may deem convenient; to demand and accept an accounting from those who are under obligations to render same to me, and he is hereby empowered to examine and approve or reject such accounting, and to receive or to pay any balance which may be due, and issue the necessary receipts therefor; to sell or transfer either absolutely or under such terms and conditions as he may deem proper, any real or personal property belonging or which may belong to me for such price and under such conditions as he may consider most advantageous, and to receive the proceeds of same either in cash or installments; setting forth any liens or incumbrances which may exist upon the said property, guaranteeing the title to the property thus sold, in accordance with the law, and for this purpose to execute and sign such public instruments and other documents as may be necessary; to borrow for my benefit such sums as he may deem necessary for the time and at such interest, and under such terms and conditions as he may see fit; and

- 5 he is hereby expressly empowered to secure such loans or any other obligations arising thereunder by mortgaging so much of my real or personal property as may be necessary, executing such public instruments as may be required; to represent and defend me before the courts and other departments and offices of the Government in any action or proceedings which may be brought by or against me, either civil or criminal, and for this purpose he is authorized to draft and sign all complaints, informations, petitions and writings of any kind whatsoever, to raise questions as to the jurisdiction of the courts, file all necessary motions, present such documentary or oral evidence as may be required, object to the introduction of witnesses, accept notices, citations and summonses, orders and judgments, assenting to such as are favorable, and prosecuting such remedies as may be proper to that which is unfavorable, following the proper proceedings to the final determination, or he may desist from such proceedings whenever he may see fit, and he is hereby empowered to employ attorneys, and for the purposes hereinbefore set forth, I confer upon him the most ample power, without restriction or limitation, with the power of substitution, either in whole or in part, or of revocation, and I hereby promise to confirm and ratify whatever my said attorney or his substitute may do hereunder.

In witness whereof, I have hereunto set my hand this twentieth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

## 6 CITY OF MANILA, UNITED STATES OF AMERICA:

In the city of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me, Francisco Martinez Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

VICENTE G. AZAOLA,  
*Notary Public.*

My commission expires January 1st, 1905.

[NOTARY'S SEAL.]

## 7 PLAINTIFF'S EXHIBIT "C."

Carbon duplicate of instrument of June 15, 1903, attached to Plaintiff's complaint. (See page — Record Case No. 3472.)

## 8 PLAINTIFF'S EXHIBIT D.

In the City of Manila, Philippine Islands, this twenty-fourth day of February, 1904, personally appeared before me, Manuel Torres, a notary public in and for this City of Manila, Mr. A. A. Mathews of this City, who says: That by an act dated the 17th of December last he took charge of the steamer Germana as depositary appointed for this purpose by the International Banking Corporation and that he appears herein as such Depositary of the said steamer "Germana", the object of his appearance being to ask me to request Mr. Robert Wemyss Brown the agent of the International Banking Corporation to take charge of the steamer Germana, relieving deponent as such depositary, he being unable to continue as such on account of other duties.

After ratifying the foregoing, deponent signed these presents the day, month and year hereinbefore set forth.

(Signed)

A. A. MATHEWS.

Before me:

(Signed)

MANUEL TORRES,  
*Notary Public.*

My Commission expires January 1st, 1905.

[NOTARY'S SEAL.]

Whereupon, and at three o'clock P. M., the undersigned notary called at the offices of the International Banking Corporation, and having before him Mr. Robert Wemyss Brown, who stated that he was the agent of the Bank, of age, married, and a merchant of this City, personally known to me, I informed him of the object of these proceedings and read and delivered to him a copy of the foregoing instrument, whereupon he said:

9 That he did, and hereby, relieved the said A. A. Mathews as such depositary of the steamer *Germana*, stating at the same time that he was very much satisfied with the zeal with which he had performed the duties of his office, and requested that the said steamer *Germana* be delivered to Geronimo Jose, of this City, who should hold the same subject to the order of the Bank, as pledgee.

Geronimo Jose, being present, accepted the foregoing appointment as depositary of the said steamer "*Germana*" and promised to discharge the duties of his office well and faithfully, holding the said steamer at the disposal of the International Banking Corporation.

In witness whereof both signed these presents, together with the undersigned notary, to which I certify.

I further certify that Messrs. Mathews, Brown and Geronimo Jose exhibited to me their registration tax certificates numbered —, 153141 and 122551, issued — day of —, May 13th and April 29th, 1903 by the Assessor and Collector of the City of Manila.

(Signed)

A. A. MATHEWS,

GERONIMO JOSE,

For THE INTERNATIONAL BANKING CORPORATION,

R. W. BROWN, *Manager*.

Before me:

[NOTARY'S SEAL.]

MANUEL TORRES,

*Notary Public.*

My commission expires January 1, 1905.

On the same day at four o'clock P. M. accompanied by Geronimo Jose I went aboard the steamer *Germana* referred to in the above instrument, which said steamer was moored at the Muelle de la Reina, and having before us the person who claimed to be Gaudencio

Ferrer y Malabana and captain of the said boat, with registration tax certificate No. 161913, issued by the Assessor and

10 Collector of the province of Batangas on the 23rd day of

June, 1903, the undersigned notary informed him of the object of these proceedings and introduced to him the said Geronimo Jose as the depositary appointed by the International Banking Corporation, and he promised to acknowledge him as such.

In witness whereof they signed these presents, to which I certify

(Signed)

GERONIMO JOSE.

GUADENCIO FERRER.

Before me:

[NOTARY'S SEAL.]

MANUEL TORRES,

*Notary Public.*

My Commission expires January 1, 1905.

Recorded in book of fifth list, volume two, pages 28 and 29, the registry of this Port. Manila, March 8th, 1904.

(Signed)

C. McCASKEY,

*Surveyor of Customs for the Philippine Islands.*



11

## PLAINTIFF'S EXHIBIT "E."

UNITED STATES OF AMERICA,

*Philippine Islands,**City of Manila, ss:*

Personally came and appeared before me the undersigned authority, Geronimo Jose, of the city of Manila, of lawful age, with cedula No. A229995, issued at the city of Manila, P. I. April 10, 1904, who, after being by me first duly sworn, deposes and says:

That by public act dated the 24th of February 1904, before Manuel Torres, Notary Public of the City of Manila, he was appointed depository of the steamship "Germana", owned by Francisco Martinez, and transferred by him to the International Banking Corporation of the city of Manila, which escritura was duly registered in the office of the Collector of Customs for the Philippine Islands on the 8th of March 1904; that being desirous of surrendering his trust as depository of said International Banking Corporation, he does by these presents hereby transfer, set over and assign and surrender, with full substitution and subrogation, all his rights, title and interest as depository in said steamship "Germana", to George Armstrong of the City of Manila, Philippine Islands; hereby acknowledging payment in full and of all demands of all claims against said vessel, privileges of whatsoever nature.

(Signed)

GERONIMO JOSE.

Sworn and subscribed to before me this 8th day of August, 1904, deponent exhibiting to me his cedula above mentioned.

JOS. N. WOLFSON,

*Notary Public.*

My commission expires January 1st, 1905.

12

And now comes George Armstrong, of lawful age, resident of and domiciled in the City of Manila, P. I., who hereby acknowledges the receipt and delivery of the said vessel "Germana", and accepts the trust as depository of said vessel for and in behalf of the International Banking Corporation of the city of Manila.

(Signed)

GEO. ARMSTRONG.

UNITED STATES OF AMERICA,

*Philippine Islands,**City of Manila, ss:*

Subscribed to before me this 22nd day of August, 1904, deponent exhibiting to me his Cedula No. 278849 issued at the city of Manila, P. I., June 30, 1904.

(Signed)

J. OSTRAND,

*Notary Public.*

My commission expires —.

And now to these presents comes the International Banking Corporation, who accept- the said George Armstrong as depository for and in its behalf instead of the said Geronimo Jose, whom *they* relieve- from said trust.

For THE INTERNATIONAL BANKING  
CORPORATION,  
(Signed) M. MARSHALL, *Manager*.

UNITED STATES OF AMERICA,  
*Philippine Islands,*  
*City of Manila, ss:*

Subscribed to before me this 22nd day of August, 1904, deponent U. S. Marshall exhibiting to me his Cedula 240936 issued at the City of Manila, P. I., April 30, 1904.

(Signed)

J. OSTRAND,  
*Notary Public.*

My Commission expires —.

## 13

## PLAINTIFF'S EXHIBIT F.

Know all men by these presents, That I Rafael Reyes y Matela, a merchant, of age, married, and a resident of this City, as the general manager of the corporation entitled "El Varadero de Manila" by virtue of *his* appointment as such contained in the certificate issued by the president of the said Corporation, Don Venancio Balbas on the 29th of May, 1901, do hereby declare as follows:

First. That by a public instrument, numbered 23, executed in this City before the Notary Public Jose Maria Rosado on the 15th of January of this year, Francisco Martinez y Garcia obligated himself to pay to the Corporation "El Varadero de Manila," which I represent the sum of thirty thousand pesos due the said corporation for certain repairs made to the steamer Don Francisco, which sum he promised to pay within two months from the date of the said instrument, with interest at the rate of nine per cent per annum, he having secured the said obligation by a special mortgage upon a one-half interest in the following described property:

A house of strong material, with tile roof, and a ware-house adjoining the same of stone and brick construction, also having a tile roof, and the lot upon which these buildings stand. The lot measures five hundred and seventy-six square meters and ten centimeters, the house occupying four hundred and fifty square meters thereof and the camarin ninety square meters and twenty-four decimeters. The property is located on Calle Barcelona, corner of Calle Jaboneros of the district of Binondo, municipality of Manila, and within the northern demarcation of the registry of property of this capital. It

is bounded in front, that is to say on the east by the said  
14 Calle Barcelona; on the right, that is, on the south, by the warehouse of Allan Boile; on the left, that is on the north, by Calle Jaboneros, and in back that is, on the west by the warehouse

of Mr. Enchen. The house is numbered 53 on Calle Jaboneros and 7 on Calle Barcelona.

A piece of urban property consisting of a house of strong materials, and the four adjoining apartments, also of strong materials, two of the front doors facing on Calle Elcano and the other two on Calle Caballeros of the district of Binondo, and within the northern district of the registry of property of this Capital, the block having no particular designation. It is bounded on the right by lot number 65 belonging to Sora, Asuncion Ventura y Hocorna, represented Maria del Rosario; on the left by lot number 61 belonging to the heirs of Luciano Romero, towit, Doña Potenciana, married to Julio Margarejo, Don Emilio, Doña Isabel and Don Valentin, represented in this City by the administrator of the property, Vicente Blas; and in back by Calle Caballeros. This lot is the shape of a parallelogram and is eight meters and fourteen centimeters by thirty-three meters and forty-three centimeters, having a superficial area of two hundred and seventy-two meters and twelve centimeters.

Second. That Francisco Martinez, having paid thirteen thousand pesos, gold, on account of the said indebtedness, the interest thereon and expenses incident thereto, to the corporation "El Vareda de Manila," I Rafael Reyes y Matela, as general agent of the said corporation "El Vareda de Manila," do hereby solemnly declare and acknowledge to have received from Francisco Martinez the sum of thirteen thousand dollars gold in full payment and satisfaction of the said indebtedness of thirty thousand pesos Mexican currency, the interest thereon and expenses incurred, and hereby cancel and annul whatever obligations personal or otherwise contracted by the debtor Francisco Martinez under the instrument referred to as of the fifteenth of January last, which I hereby also annul, annul and set aside, in such a manner that it will never have any effect or value in or out of Court, hereby releasing the property herein described from the mortgage heretofore existing upon the same.

In witness whereof, we have signed these presents in triplicate this second day of June, 1903.

(Signed)

R. REYES.

Signed in the presence of:

POT. VIL BERNABE.

J. ROLDAN.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon,*

*Philippine Islands, ss:*

In the city of Manila this second day of June, 1903, personally appeared before me Rafael Reyes y Matela, known to me to be the person who executed the foregoing instrument, which he acknowledged and ratified as his own free act and deed, having exhibited to me his registration tax certificate number 126826, issued April 17th last by the Assessor and Collector of this province.

In testimony whereof I have signed my name and affixed my seal of office the day, month and year, above set forth.

(Signed)  
[NOTARY'S SEAL.]

JOSE MA. ROSADO,  
*Notary Public.*

My commission expires on the first of January, 1905.

15½

## DEFENDANT'S EXHIBITS.

Cases Nos. 3471 and 3472.

16

## EXHIBIT 1.

"\$30000.

We hereby jointly and severally promise to pay in Manila, the eighth of February next, to the order of the International Banking Corporation, the sum of thirty thousand pesos, for value received for commercial transactions.

Manila, January 23rd, 1903.

(Signed)

FRANCISCO MARTINEZ  
CASIMIRA LOPEZ."

NOTE.—A part of the signature of Francisco Martinez is torn off and his signature in full again appears on the lower left hand corner of the note.

## DEFENDANT'S EXHIBIT 2.

Mr. R. W. Brown, Agent for the International Banking Corporation at Manila, City.

DEAR SIR: In Guarantee of the attached promissory note for 80,000 pesos, which you will please credit to my account at eight per cent discount, I hereby promise to and do mortgage in favor of that Bank the property belonging to me and described in the enclosed list, turning over to the Bank, in addition to this obligation, the administration of the said property and the collection of rent, which will be credited to my account, subject to the final settlement to be made on the 30th of June, next; and I hereby authorize the Bank to sell said property, judicially or otherwise should there on that day be a balance against me, provided the Bank is unwilling to continue the business by renewing the present obligation, or such obligation as may result by reason of an unpaid balance, and to this end I hereby promise, without pretext or evasion whatsoever, to em-

body this obligation in a public instrument, in accordance with the new notarial and mortgage law and I further agree not to exercise any act of ownership over said property, nor to dispose of the same except through the Bank.

Very respectfully,

(No signature.)

for this purpose I hereby turn over to the Bank the title deeds of said property.

NOTE.—This rough draft is written on the back of a form for a promissory note furnished by the Bank, partially filled out for the obligation of 80,000 pesos, but unsigned.

18

## DEFENDANT'S EXHIBIT No. 3.

MANILA, February 7, 1903.

Señor Don Pedro Cantero, Present.

MY DEAR SIR: I authorize you to settle all my business pending with my son, Don Pedro Martinez, settling the same in the manner most favorable to me, as well as the settlement and payment of all my creditors, either by the payment of monthly sums until the extinction of the debts or upon such discount as you may deem favorable to me endeavoring in all cases to secure the best relief for me in the performance of my obligations, for which purpose I obligate myself to accept the payments which you may agree upon with my creditors in my favor.

If you should not be able to personally carry out these matters judicially or extra-judicially, I authorize you and give you my power of attorney sufficient in law, in order that without any limitation you may appoint a substitute for the said purpose, authorizing him in his turn to sign the documents, writings and whatever else may be necessary to carry into effect this power.

Very respectfully,

(S'g'd)

FRANCISCO MARTINEZ.

Signed and sworn to before me this 11th day of February, 1903.

(S'g'd)

J. McMICKING,

*Clerk of the Court of First Instance of Manila,*

[SEAL.]

*Notary Public ex-Officio.*

19

## DEFENDANT'S EXHIBIT No. 4.

Received your note. It shall be done as you desire.

The escritura of the prodigal I entrusted to Gutierrez, who has not understood the same, and I am making it myself. There are no difficulties. The prodigal is very well disposed towards the bank. You can telegraph that everything is all right.

I desire that you inform me how you have proceeded in your books with reference to the loan of 30,000 pesos, guaranteed by the Germana and Don Francisco. Did you deliver to the prodigal this amount of money? Did you credit it in any account in order to establish the payment by you of the loan? I desire to have this detail.

The Chinaman has a contract with Tagawa to furnish onions. We have sufficient stock on hand, and in any case we can order it from China or Australia. I have sent for Tagawa in order to inform myself if he can comply with the contract. At present we have sufficient onions.

(S'g'd)

C.

The payment of the loan account of Germana is as follows:  
On the 30th of June the loan account was debited with

16,000 pesos, promissory note Mascuñana.  
4,000 pesos, promissory note L. Rosario.  
5,000 pesos, promissory note L. Rosario.

---

25,000 pesos.

2,505 advanced on the 28th of July for maritime insurance paid  
to Smith Bell.

---

27,505

July 8, 1904.

H. D. G.

V. G.

T. C. K.

20

## DEFENDANT'S EXHIBIT No. 5.

MANILA, April 2, 1903.

To the Agent of the International Banking Corporation, Present.

MY DEAR SIR: I beg of you that with the amount of the promissory notes of 3 and 27 thousand pesos Mex. which I have issued in your favor on this date, you will pay to the Association Varadero of Cavite the amount of the mortgage obligation which I have contracted with the same and to the amount of 30,000 pesos, retiring from said association the titles of the properties mortgaged, which are in my possession, and which shall remain in the possession of the Bank which you represent, by virtue of the escritura which I have previously executed with respect to said property.

Very respectfully,

(S'g'd)

FRANCISCO MARTINEZ.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

21

## DEFENDANT'S EXHIBIT No. 6.

\$27,000.00.

"We hereby jointly and severally promise to pay in Manila, on the second of July, next, to the order of the International Banking Corporation the sum of twenty-seven thousand pesos, Mexican currency, for value received for commercial transactions of the conjugal partnership of Martinez é Ilustre.

"Manila, April 2nd, 1903.

(Signed)

FRANCISCO MARTINEZ.

Indorsed: "July 8th, '04, H. D. G. V. G. T. C. K."

22

## DEFENDANT'S EXHIBIT No. 7.

\$3000 Mex. Matures July 2, 1903.

I hereby promise to pay in Manila on the 2nd of July, next, to the order of the International Banking Corporation the sum of 3,000 pesos, Mex., value received from the same in cash for commercial operations of the conjugal partnership Martinez and Ilustre.

Manila, April 2, 1903.

(S'g'd)

FRANCISCO MARTINEZ.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

23

## DEFENDANT'S EXHIBIT No. 8.

MANILA, P. I., *May 2, 1903.*

Señor Don Robert W. Brown, Agent of the International Banking Corporation, Present.

MY DEAR SIR: I hereby authorize you to proceed immediately to place maritime insurance on the steamers Don Francisco and Germana, to which the instrument executed by me on this date refers, and which amount you will please charge to my account.

Very respectfully,

(S'g'd)

FRANCISCO MARTINEZ.

Subscribed and sworn to before me this 2nd day of May, 1903.

(S'g'd)

EDUARDO GUTIERREZ REPIDE,

[SEAL.]

*Notary Public.*

My appointment expires on the 1st day of January, 1905.

24

## DEFENDANT'S EXHIBIT No. 9.

MANILA, P. I., *April 21, 1903.*

Mr. Robert W. Brown, Agent of the International Banking —, Present.

MY DEAR SIR: As additional security to those already given by me to your bank on account of the promissory note of 80,000 pesos, and of another for the value of thirty thousand pesos, I offer to you the participation which I have in the conjugal partnership, Martinez-Ilustre, in the steamers Don Francisco and Germana registered in my name, and the rights which I may have against my son, Don Pedro Martinez, in the steamer Balayan on account of judgment of the 13th of January, of this year, and which in a short time shall be enforced by me in the corresponding action, to which effect I hypothecate to you from this time on said participation, authorizing you to

order prepared immediately the corresponding instruments with the conditions which you deem convenient, to which I hereby conform, considering that it shall necessarily be in accordance with the equity and justice with which your bank proceeds.

Very respectfully,

(S'g'd)

FRANCISCO MARTINEZ.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

25

DEFENDANT'S EXHIBIT No. 10.

MANILA, P. I., April 21, 1903.

Señor BROWN:

I have talked with Don Francisco Martinez for the purpose of increasing the guarantees given to your bank, at the same time that you amplify his credit to 30,000 pesos, according to the conditions set forth in the letter hereto attached. If you are agreeable you can retain this last, in order that by virtue thereof you may proceed to the execution of the escritura. It would be advisable, at all events, that you should inquire of Mr. Armstrong, who has the consignment of them, as to the value of these steamers, and if he will respond to the guarantee. No one can inform you upon the subject better than he. Don Francisco has asked me to say to you that you should not pay the check of Pápa because he has deceived him miserably. He sold the credit of 15,000 pesos for 4,000 pesos, and when he received the check for this sum he gave a receipt on account of that credit, Pápa reserving therefore the right to collect the balance. Attached hereto is the receipt of the latter. Limit yourself solely to refusing payment of the check referred to, saying that it is not current and without giving explanations.

I now believe that with the increase of guarantee you can pay the two checks of 2,000 pesos which Don Francisco has issued, and of which I have talked with you, as well as that of the Esmeralda. One of them the bearer takes with him. You will determine the matter.

Very respectfully,

July 8, 1904.

H. D. G.

V. G.

T. C. K.

26

DEFENDANT'S EXHIBIT No. 11.

Steamers Don Francisco and Germana.

To all to whom these presents shall come:

Be it known that I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at No. 62 Lavazeres, of age, married a third time, a merchant by occupation, in considera-



tion of the sum of 30,000 pesos, local currency by me paid by the International Banking Corporation, through its agent Robert Wemyss Brown of this city, of age, married and a merchant, do hereby pledge to the said Banking Corporation as security for the said loan a one-half interest in the steamers "Don Francisco" and "Germana," of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my deceased wife Germana Ilustre, which steamers are described as follows:

Steamer "Don Francisco," provided with high and low pressure engines of twenty-five horsepower, brigantine rigged. This steamer was built in Hongkong in the year 1893 for Messrs. Goo Jemorek Comp. L., ship builders at that port, it having a copper sheathed wooden hull. The said Messrs. Goo Jemorek Comp. L. sold the said ship to George Armstrong, and English subject, a merchant of Manila and at present residing at the said port of Hong Kong for the agreed sum of 19,000 pesos, and it was sold by the said George Armstrong to Don Francisco Martinez of Balayan, province of Batangas for the same price, 19,000 pesos, as appears from the instrument executed before the Spanish Consul at the said Port of Hong Kong, and

from the instrument numbered 263, whereby Don Francisco Martinez y Garcia accepted the sale of the said ship before the notary public of this City, Calixto Reyes y Cruz on the twentieth of June, 1893. Its dimensions are as follows: length thirty-one meters and thirteen centimeters; beam five meters and fifty centimeters; and depth two meters and nineteen centimeters, with a tonnage of one hundred and five and twenty-six one-hundredths tons as per certificate issued on the twentieth of May, 1893, by the ship gauger of this port, Luis Ruis y Moreno. This steamer was appraised by the Harbor Master and mechanical expert on the 18th of May, 1893, it being found that its wooden hull was copper sheathed. It has an actual value of thirteen thousand pesos, its rigging a value of five hundred pesos; its sails and tackle being of the value of fifteen hundred pesos; making a total of fifteen thousand two hundred pesos. The boiler, engines and tank of the said ship are of the value of five thousand eight hundred pesos. And under section 5 title 9 of the ordinances of 1802 it is provisionally recorded in this entry pursuant to the order of the naval commander of the second instant.

Manila, April 12th, 1898.

(Signed)

ARTURO MARCUO.

Screw steamer "Germana," with high and low pressure engines, thirty-two nominal horsepower, schooner rigged. This steamer was built in the neighboring port of Hong Kong in the year 1897. It belongs to William George Winterburn, a resident of that port, engineer and ship builder, who sold the same to Francisco Martinez y Garcia, a resident of Balayan, province of Batangas, for the stipulated sum of fifty-six thousand pesos, as appears from a certain document of sale executed on the third of May, 1897, before the notary

public of this city, Agustin Malfas y Mera. This ship was measured by the Acting Official Ship Gauger, Manuel de la Vega, a marine lieutenant, as shown by a certificate issued May tenth, 1897, its dimensions being as follows: length thirty-two

meters and sixty-nine centimeters; beam, five meters and forty-five centimeters; and depth, two meters and twenty-nine centimeter-, the total tonnage being one hundred and thirty-six and thirty-nine one-hundredths tons and the net tonnage being eighty-eight and seventy-eight one-hundredths tons. It was appraised by the Harbor Master and iron ship inspector of this port as shown by a certificate dated May 7th, 1897, from which it appears that its copper sheathed wooden hull is worth 14000 pesos; its masts and rigging 500 pesos; sails and tackle 1100 pesos; and two boats in good condition, two hundred and fifty pesos; making a total of fifteen thousand eight hundred and fifty pesos. Its high and low pressure engines, with condensers, of thirty-two nominal horsepower and donkey engine, pipes and auxiliary apparatus having been valued at 10,200 pesos, making a total of 26,050 pesos. And in compliance with the order of the naval commander of the 12th instant, and in accordance with the provisions of section five, title nine of the ordinances of 1802, it is provisionally recorded in this entry until the proceedings relating to the registration are approved by higher authority.

Manila, April 15th, 1898.

(Signed)

ARTURO MARENCO.

I further make known that the loan to secure which I have pledged the aforesaid two steamers is subject to the condition that the said thirty thousand pesos received shall be returned by me in local currency, with interest at the rate of eight per cent. per annum and that I shall defray any expenses which may be incurred by my failure to discharge the said obligation, on the second day of August of the present year.

I further make known that until the said obligation is fully discharged, Benito Robles will take charge of the said steamer and shall hold the same as depositary for the benefit of the Bank as pledgee.

And, whereas, Mr. Robert Wemyss Brown has agreed to the foregoing in his capacity as agent of the Bank, as appears from the power of attorney conferred upon him and duly recorded on the sixth of June of last year in the Mercantile Register of this City at page three hundred and sixty-six, second inscription of the partnership books, he, the said Robert Wemyss Brown hereby accepts all of the covenants and agreements contained in this instrument.

Likewise Benito Robles, of this city, residing in the District of San Nicolas, interior, of age, hereby accepts his appointment as depositary of the said steamers, which office he promises to perform truly and faithfully, and to at all times hold the steamers at the disposal of the Bank, until this obligation is fully discharged.

In virtue whereof, the contracting parties and the depositary after having carefully read this instrument sign and ratify the same in the presence of the witnesses José Gervacio Garcia and Gregorio Ramos, this second day of May, 1903.

BENITO ROBLES.  
R. W. BROWN.  
GREGORIO RAMOS.

FRANCISCO MARTINEZ.  
JOSE GERVACIO GARCIA.

0 UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this second day of May, 1903, personally appeared before me Francisco Martinez, Robert Wemyss Brown and Benito Robles, personally known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their own free act and deed.

FRANCISCO MARTINES.

R. W. BROWN.

BENITO ROBLES.

Before me:

EDUARDO GUTIERREZ REPIDE,  
*Notary Public.*

My Commission expires January 1st, 1905.

[NOTARY'S SEAL.]

Indorsed: "July 8-'4. H. D. G. V. G. T. C. K."

31 DEFENDANT'S EXHIBIT No. 12.

'Germana.

23 DECEMBER, 1903.

Disposition of the Promissory Note of 80,000 Pesos.

The bank carried the loan, the value of the promissory note of 80,000 pesos; on the 30th of June when said promissory note matured there were debited in that account the promissory notes endorsed to the bank by Don Lorenzo del Rosario, issued by Señor Martinez on distinct dates, which were one for 16,000 pesos, another for 4,000 pesos, and another for 5,000, total 25,000. To this amount there was added the payment of the maritime insurance made to Señor Smith, *Bell* remaining therefore a debit of 27,505 pesos, and a balance in favor of Martinez of the sum of 2,505 pesos, of the matured promissory note.

In order to retire the promissory note above mentioned of 30,000 pesos, Martinez drew against his account current a check for the sum of 30,000 pesos said promissory note being returned to him in exchange for said check.

This check therefore, of 30,000 pesos, ought to be debited in the account current, noting it as an omission suffered in the same and crediting it in the loan account in order to cancel same."

Indorsed: "July 8-'04. H. D. G. V. G. T. C. K."

## Acceptance.

"And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this 7th day of November, 1903. Amended s-n-l-n correct.

(Signed)

R. W. BROWN.

Signed in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the 7th day of November, 1903, personally appeared before me Messrs. Don Francisco Martinez and Garcia, without certificate of registry on account of assuring me that he is exempt from the pa——.

Indorsed: "July 8-'04. H. D. G. V. G. T. C. K."

## Acceptance.

"And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its

contents and signed it in Manila this 7th day of November, 1903.  
Amended s-n-l-n correct.

(Signed)  
"

\_\_\_\_\_  
R. W. BROWN.

Signed in the presence of:

\_\_\_\_\_  
\_\_\_\_\_.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the 7th day of November, 1903, personally appeared before me Messrs. Don Francisco Martinez and García, without certificate of registry on account of assuring me that he is exempt from the pa—.

Indorsed: "July 8-'04. H. D. G. V. G. T. C. K."

34

DEFENDANT'S EXHIBIT No. 15.

Acceptance.

"And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this 7th day of November, 1903.  
Amended s-n-l-n correct.

(Signed)  
"

\_\_\_\_\_  
R. W. BROWN.

Signed in the presence of:

\_\_\_\_\_  
\_\_\_\_\_.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the 7th day of November, 1903, personally appeared before me Messrs. Don Francisco Martinez and García, without certificate of registry on account of assuring me that he is exempt from the pa—.

Indorsed: "July 8-'04. H. D. G. V. G. T. C. K."

35

## DEFENDANT'S EXHIBIT No. 16.

This is a duplicate of the document of the 12th of February, 1904, which is attached as exhibit "A" to Defendant's answer in case No. 3472, page 13 which has been torn out. (See page — Record, Case 3472.)

36

## DEFENDANT'S EXHIBIT No. 17.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

## Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector—

Indorsed: "July 8-04. H. D. G. V. G. T. C. K.

37

## DEFENDANT'S EXHIBIT No. 18.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector——

Indorsed: "July 8-04. H. D. G. V. G. T. C. K.

38

## DEFENDANT'S EXHIBIT No. 19.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L.

Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector—

Indorsed: "July 8-04. H. D. G. V. G. T. C. K.

39

DEFENDANT'S EXHIBIT No. 20.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

R. W. BROWN.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.



UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector—

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

40

## DEFENDANT'S EXHIBIT No. 21.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector—

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

41

## DEFENDANT'S EXHIBIT No. 22.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the corresponding instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 153141, issued May 13th, 1903, by the Assessor and Collector——

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

42

## DEFENDANT'S EXHIBIT No. 23.

and Custom House and Captain of the Port's Office shall be borne by Don Francisco Martinez y Garcia, and shall be charged by the Bank to his account current.

Acceptance.

And, Whereas, that which is above set forth has been agreed upon with Mr. Robert Wemyss Brown, of this neighborhood, of age, married, merchant, in his capacity as directing agent in Manila of the International Banking Corporation, as appears from the correspond-

ing instrument of power of attorney, executed by Don William L. Moyer and James H. Rogers, president and secretary respectively of said Banking Corporation, domiciled in the State of New York, on the 14th of March of the present year; this gentleman in the representation which he has, manifests hereby his acceptance to that which has been set forth and both contracting parties after having carefully read this document have ratified the same in its contents and signed it in Manila this — day of — 1904.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

RAMON LONTOC.

JULIO DUEÑAS.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon, Philippine Islands, ss:*

In the City of Manila on the — day of —, 1904, personally appeared before me Messrs. Francisco Martinez y Garcia, without certificate of registry, on account of assuring me that he is exempt from the payment of this tax by reason of his age, and Robert Wemyss Brown with registration tax certificate No. 143141, issued May 13th, 1903, by the Assessor and Collector——

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

43

DEFENDANT'S EXHIBIT No. 24.

I have received of Don Francisco Martinez for delivery to the International Banking Corporation, to be charged to his current account, a check of 30,000 pesos, No. 15,972, signed and issued on this date, Manila, June 21, 1903.

(Sgd.)

R. REGIDOR.

44

EXHIBIT No. 25.

"For \$16,000.00

"I hereby promise to pay in Manila on the thirtieth of June of the present year to the order of Ramon Maseñanan the sum of Sixteen thousand pesos, Mexican currency, for value received in cash without interest, to my entire satisfaction, for commercial transactions.

"Manila, April 6th, 1903.

(Signature torn off.)

Indorsements on back: "Pay to the order of Lorenzo del Rosario, Manila April 7th, 1903. (Signed) R. Maseñana." "Pay to the order of the International Banking Corporation, value received. Manila, April 8th (the year is torn off) (Signed) Lorenzo del Rosario."

"Received payment for the International Banking Corporation. T. H. Norril, Manager."

## DEFENDANT'S EXHIBIT 26.

"For \$8,000.00

"I hereby promise to pay in Manila, two months from date, to the order of Ramon Maseñana the sum of Eight thousand pesos, Mexican currency, value received in cash, without interest, and to my own satisfaction for commercial transactions.

"Manila, April 6th, 1903.

(Signature torn off.)

Indorsements on back: "Pay to the order of Lorenzo del Rosario, Manila, April 7th, 1903. R. Maseñana.

"Pay to the order of the International Banking Corporation, value received. Manila April 8th, (year torn off) (Signed) Lorenzo del Rosario.

45

## DEFENDANT'S EXHIBIT No. 27.

"No. 32251.

MANILA, 26 March, 1903.

The International Banking Corporation.

"Pay ——— or Bearer Dollars Eight thousand two hundred and fifty, Mexican.

"\$8,250.00.

Local currency.

(Signed)

LORENZO DEL ROSARIO."

Indorsed: *Transfers.*

## DEFENDANT'S EXHIBIT No. 28.

"No. 24181.

MANILA, Feb. 27, 1903.

The International Banking Corporation, Manila.

"Pay ——— or Bearer, Dollars, Seven thousand five hundred and eighty-seven 68/100.

\$7587.68.

Local currency.

(Signed)

RICARDO REGIDOR."

[Written across face:] "R. W. B."

## DEFENDANT'S EXHIBIT No. 29.

International Banking Corporation.

\$7587.68.

MANILA, 28 Feb., 1903.

Credit a/c Postponed Payment.

Chq. 22791 agst. R. Regidor's chq. 24181.....	7587.68
	<hr/>
	\$7587.68

"R. W. B.,  
Accountant."

## DEFENDANT'S EXHIBIT No. 30.

"No. 22791.

MANILA, 28th February, 1903.

46 The International Banking Corporation, Manila.

Pay ——— or Bearer. Dollars, Seven thousand five hundred and eighty-seven and 68/100.

\$7587.68/100.

Local currency.

(Signed)

For the INTERNATIONAL BANKING  
CORPORATION.R. W. BROWN, *Manager*.

## DEFENDANT'S EXHIBIT No. 31.

"The International Banking Corporation, Manila.

Credit Pedro Cantero:

By Silver.....\$

By Notes.....

By cheques..... 7587.68

---

\$7587.68

Manila, March 16, 1903.

## DEFENDANT'S EXHIBIT No. 32.

"The International Banking Corporation, Manila.

Credit P. Cantero:

"By Silver.....\$

By Notes.....

By Cheques..... 8250.

By drafts.....

---

\$8250.

Manila, April 8, 1903."

47

## DEFENDANT'S EXHIBIT No. 33.

Indorsed on cover: Pedro Cantero.

Mex a/c.

International Banking Corporation, Manila Branch,

In Account Current with Pedro Cantero.

DR.

CR.

## Mexican Currency.

1903.				1903.			
Mch. 3.	To promissory note..	\$980.		Mch. 16	By ch.	27278	\$170.
17.	ch.	7,587.68		17	" "	6	80.
				18	" "	27285	3,000.
				" "	" "	6	1,000.
				" "	" "	7	520.
				" "	" "	1	1,960.
				19	" "	8	3,500.
				21	" "	2	104.
				" "	" "	3	27.90
				" "	" "	9	46.
				24	" "	4	169.
				" "	" "	79	797.
Over..		\$8,567.68		Over..		\$11,373.90	
1903.				1903.			
	Forward..	\$8,567.68			Forward..	\$11,373.90	
April 8.	To ch.....	8,250.		Mch. 27	By ch.	27290	2,000.
June 29.	cash.....	800.		" "	" "	1	30.
30.	balance .....	222.69		28	" "	2	3,150.
				Apl. 8	" "	7	60.
				15	" "	10151	40.
				20	" "	27296	91.80
				May 7	" "	3	50.
				June 3	" "	10154	200.
				19	" "	6	400.
				24	" "	7	200.
				R 26	" "	24187	218.26
				30	Interest.....		26.41
		\$17,840.37				\$17,840.37	
1903.				1903.			
July 31.	To cash.....	\$1,000.		June 30	By balance...	222.69	
				July 6	ch.	10153	200.
				R "	" "	24188	500.
				21	" "	10160	100.
				Aug. 4	" "	3	100.
Over..		\$1,000.		Over..		\$1,122.69	

[illegible]

1904.			1904.		
Jan. 16.	To paid in cash.....	\$43.38	Jan. 1st.	By balance..	\$43.38
		<u>\$43.38</u>			<u>\$43.38</u>

MANILA, *June 2, 1903.*

No. 10153S.

International Banking Corporation.

Pay \_\_\_\_\_ or bearer, Two hundred pesos mex. Silver dollars.  
\$200-00\$

R. W. B.

(Signed)

PEDRO CANTERO.

Rubber stamp on face: "Paid."  
Indorsed on back: "Sisto Natividad."

MANILA, September 8, 1903.

No. 10191S.

International Banking Corporation.

Pay ——— or Bearer, Three hundred pesos mex. Silver Dollars.

#300 #

(Signed)

PEDRO CANTERO.

(Revenue stamp.)

Indorsed on face with stamp: "Cash Paid."

" on Back: Thomas Jamora.

MANILA, September 11, 1903.

No. 10193S.

International Banking Corporation.

Pay ——— or bearer, Two hundred pesos mex. Silver Dollars.

#200.00/100 #

(Signed)

PEDRO CANTERO.

Revenue Stamp.

Stamped: Cash Paid.

Indorsed on back: "Received. Benigno Bueno."

MANILA, September 8, 1903.

No. 10192S.

International Banking Corporation.

Pay ——— or bearer Twenty mex. and eighty-six cents Silver dollars.

\$#20.86/100 #

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

(Stamps: Transfers.

Not Negotiable a/c C. C. of I. A. &amp; C.

Indorsed on back: E. C. McCullough &amp; Co., Incorporated per E. E. Ellser, Ass't Manager."

MANILA, August 17, 1903.

No. 10173S.

International Banking Corporation.

Pay Francisco Reyes or bearer One thousand five hundred and eighty pesos, mex. Silver Dollars.

\$#1580.00 #

(Signed)

PEDRO CANTERO.

Stamp: G. T. Co. Not negotiable.

Stamp: Transfers.

(Revenue Stamp.)



MANILA, August 8, 1903.

No. 10169S.

International Banking Corporation.

Pay ——— or bearer, Two hundred seventy pesos mex. Silver  
dollars.

\$270.

(Signed)

PEDRO CANTERO.

Stamp: Cash.

Stamp: Paid.

Indorsed: C. M. Gues.

MANILA, September 7, 1903.

No. 10190S.

International Banking Corporation.

Pay ——— or bearer One hundred eighty pesos mex. Silver  
Dollars.

\$ #180.00 #

(Signed)

PEDRO CANTERO.

Stamp: Cash.

Stamp: Paid.

Indorsed: J. Abraham.

Manila, 4th September, 1903.

MANILA, August 6, 1903.

51

No. 10158S.

International Banking Corporation.

Pay ——— or bearer, Two hundred and fifty mex. Silver  
Dollars.

\$250 mex.

(Signed)

PEDRO CANTERO.

Stamp: Paid.

Indorsed on back: Gregorio Ramos.

MANILA, August 8, 1903.

No. 10168S.

International Banking Corporation.

Pay ——— or bearer, Two hundred thirty mex. Silver Dollars.

\$230\$

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamps: Paid. Cash.

Indorsed: F. M. Ewitch.

MANILA, August 6, 1903.

No. 10159S.

International Banking Corporation.

Pay ——— or bearer, Three hundred mex. Silver Dollars.  
\$300 mex.  
(Signed)

PEDRO CANTERO.

Stamps: Cash. Paid.  
Indorsed: Gregorio Ramos.

52

MANILA, August 19, 1903.

No. 10174S.

International Banking Corporation.

Pay ——— or bearer Twenty-six pesos and fifty-two cents mex.  
Silver Dollars.  
\$#26.52#  
(Signed)

PEDRO CANTERO.

Stamps: Paid. Cash.  
(Revenue Stamp.)  
Indorsed: Venancio Casaña.

MANILA, April 15, 1903.

No. 10151S.

International Banking Corporation.

Pay ——— or bearer Forty mex. Silver Dollars.  
\$#40.00#  
(Signed)

PEDRO CANTERO.

Stamp: Cash.  
Indorsed: Received, Pedro Cantero.

MANILA, June 12, 1903.

No. 10156S.

International Banking Corporation.

Pay ——— or bearer Four hundred mex. Silver Dollars.  
\$#400.00#  
(Signed)

PEDRO CANTERO.

Stamp: Cash.  
Indorsed: Juan Fernandes.  
(Internal Revenue Stamp.)

53

MANILA, *July* 10, 1903.

No. 10160S.

International Banking Corporation.

Pay ——— or bearer One hundred mex. Silver dollars.

\$ #100.00 #

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamp: Paid.

Indorsed: J. Courtney Hixson.

MANILA, *August* 12, 1903.

No. 10170S.

International Banking Corporation.

Pay ——— or bearer Eighty-four pesos and eight cents, mex.  
Silver Dollars.

\$ #84.08

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamp: Transfers.

MANILA, *June* 12, 1903.

No. 10157S.

International Banking Corporation.

Pay ——— or bearer Two hundred mex. Silver Dollars.

\$ #200.00 #

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamp: Cash.

Indorsed: P. Buntan.

54

MANILA, *September* 12, 1903.

No. 10195S.

International Banking Corporation.

Pay ——— or bearer One thousand four hundred thirty pesos  
33/100 mex. Silver Dollars.

\$ #1430.33

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Transfers.

Indorsed: Juan Busto.

MANILA, September 12, 1903.

No. 10194S.

International Banking Corporation.

Pay ——— or bearer Seventy-five pesos mex. Silver Dollars.  
\$75.00 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Transfers.

Indorsed: Juan Busto.

MANILA, September 3, 1903.

No. 10183S.

International Banking Corporation.

Pay ——— or bearer Two hundred and fifty pesos mex. Silver  
dollars.

\$ #250 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamps: Cash paid.

Indorsed: Gregorio Ramos.

4-IX-903.

55

MANILA, September 3, 1903.

No. 10182-S.

International Banking Corporation.

Pay ——— or bearer Two hundred and fifty mex. Silver Dol-  
lars.

\$ #250 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamps: Cash paid.

Indorsed: Gregorio Ramos.

4-IX-903.

MANILA, Sept. 15, 1903.

No. 10196S.

International Banking Corporation.

Pay ——— or bearer One hundred twenty pesos mex. Silver  
Dollars.

\$ #120.00 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamps: Paid cash.

Indorsed: Vicente Cuyo.

MANILA, *September 5, 1903.*

No. 10187S.

International Banking Corporation.

Pay ——— or bearer Two hundred pesos mex. Silver Dollars.

##200#

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamp on back: Rubert y Guamis, Sept. 5, 1903. Manila.

Stamp: Transfers.

56

MANILA, *September 4, 1903.*

No. 10184S.

International Banking Corporation.

Pay ——— or bearer Three hundred pesos mex. Silver Dollars.

##300.00#

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Transfers.

(Revenue Stamp.)

MANILA, *September 5, 1903.*

No. 10189S.

International Banking Corporation.

Pay ——— or bearer Twenty-six pesos mex. Silver Dollars.

##26.00#

R. W. B.

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamps: Cash paid.

Indorsed: Manila, ( ) September, 1903. Narciso de Castro.

MANILA, *September 4, 1903.*

No. 10186S.

International Banking Corporation.

Pay ——— or bearer Thirty pesos mex. Silver Dollars.

##30.00

R. W. B.

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamps: Paid cash.

Indorsed: (Signature not legible.)

57

MANILA, September 4, 1903.

No. 10185S.

International Banking Corporation.

Pay ——— or bearer One hundred seventy pesos mex. Silver Dollars.

\$ # 170.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

Stamps: Cash paid.

Indorsed: Alfonso Miranda September 5.

MANILA, August 4, 1903.

No. 10165S.

International Banking Corporation.

Pay ——— or bearer One hundred pesos mex. Silver Dollars.

\$ # 100.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamps: Paid cash.

Indorsed: Lulian Cayetana.

MANILA, August 4, 1903.

No. 10163S.

International Banking Corporation.

Pay ——— or bearer One hundred pesos mex. Silver Dollars.

\$ # 100.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamps: Cash paid.

Indorsed: Luliano Cayetana.

58

MANILA, September 6, 1903.

No. 10179 S.

International Banking Corporation.

Pay ——— or bearer One thousand pesos mex. Silver dollars.

\$ # 1000.00 #

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamp: Transfers.

Stamp on face: "For the credit of (illegible) B. E. F."

Indorsed on back: "D. M. Carman."

MANILA, August 4, 1903.

No. 10164 S.

International Banking Corporation.

Pay ——— or bearer One hundred pesos mex. Silver Dollars.

\$ # 100.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamps: Paid Cash.

Indorsed: Julian Cayetana.

MANILA, September 21, 1903.

No. 10197 S.

Pay ——— or bearer One hundred fifty mex. Silver Dollars.

\$ # 150.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamps: Paid cash.

Indorsed: Esteban Gamboa.

59

MANILA, August 21, 1903.

No. 10175 S.

International Banking Corporation.

Pay ——— or bearer Five hundred mex. Silver Dollars.

\$ # 500.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

Stamps: Paid cash.

Indorsed: (Signature illegible.)

MANILA, September 20, 1903.

No. 10180 S.

International Banking Corporation.

Pay ——— or bearer One thousand pesos mex. Silver Dollars.

\$ # 1000.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamp: Transfers.

Stamp: Not Negotiable a/c (not legible)

Indorsed: Gregorio Miranda.

MANILA, July 3, 1903.

No. 24188.

The International Banking Corporation, Manila.

Pay ——— or bearer, Dollars Five hundred mex.  
\$ #500.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

(Revenue Stamp.)

Stamp: Credit a/c IBO Not Negotiable.

Indorsed: (Signature illegible.)

60

MANILA, March 17, 1903.

Stamp: "Pedro Cartero Enriquez."

No. 27279.

The International Banking Corporation, Manila.

Pay ——— or bearer Dollars Seven hundred ninety-seven mex.  
\$ #797.00 #

R. W. B.

PEDRO CANTERO.

(Signed)

Indorsed: S (remainder of signature illegible) received.

MANILA, March 17, 1903.

No. 27281.

The International Banking Corporation, Manila.

Pay ——— or bearer Dollars One thousand nine hundred and  
sixty mex.

\$ #1960.00 #

Local currency.

(Signed)

PEDRO CANTERO.

Stamp: Pedro Cantero Enriquez, Lawyer.

Stamp: Not negotiable. A/c H. &amp; S. B. C.

MANILA, June 23, 1903.

24187.

The International Banking Corporation, Manila.

Pay ——— or bearer Dol-ars Two hundred eighteen and  
twenty-six cents.

\$ #218.26.

Local currency.

R. W. B.

PEDRO CANTERO.

(Signed)

Stamp: Cash. (Revenue Stamp.)

Indorsed: Jose Mallong.



61

MANILA, *March 13, 1903.*

No. 27276.

The International Banking Corporation, Manila.

Pay ——— or bearer Dollars Eighty mex. —.

\$#80.00#

Local currency.

(Signed)

PEDRO CANTERO

(Revenue Stamp.)

Stamp: Not Negotiable. A/c A. H. &amp; S. B. C.

Indorsed: P. C. Barretto &amp; Co., per (not legible).

Stamp: Bar-etto &amp; Co., Mary- 17, 1903. Manila.

MANILA, *March 14, 19—.*

No. 27278.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars One hundred and seventy pesos  
mex.

\$#170.00#

(Signed)

PEDRO CANTERO.

Indorsed: R. R. McDugin.

MANILA, *April 8, 1903.*

No. 27297.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Sixty mex.

\$#60.00#

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Cash.

Indorsed: Received Pedro Cantero.

62

MANILA, *March 27, 1903.*

No. 27293.

The International Banking Corporation, Manila.

Pay ——— or bearer, Dollars Fifty mex.

\$#50.00#

(Signed)

PEDRO CANTERO.

(Revenue Stamp.)

Stamp: Cash.

Indorsed: Received, Pedro Sanz.

MANILA, March 27, 1903.

No. 27291.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Thirty mex.

\$ #30.00 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Cash.

Indorsed: Pedro Cantero.

MANILA, March 27, 1903.

No. 27290.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Two Thousand mex.

\$ #2000.00 #

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp: Cash.

Indorsed: Antonio Ramirez, Station Master, Manila &amp; D. R. R.

MANILA, March 27, 1903.

63

No. 27292.

The International Banking Corporation, Manila.

(Revenue Stamp.)

Pay ——— or Bearer, Dollars Three thousand one hundred  
and fifty mex.

\$ #3150 #

Local currency.

R. W. B.

(Signed)

PEDRO CANTERO.

Stamp on face: For the Credit of (remainder illegible).  
Indorsed on back with a rubric.

MANILA, March 18, 1903.

No. 27284.

The International Banking Corporation, Manila.

Pay ——— or Bearer, Dollars One hundred and sixty-nine  
mex.

\$ #169.00 #

Local currency.

(Signed)

PEDRO CANTERO.

MANILA, March 18, 1903.

No. 27286.

The International Banking Corporation, Manila.

Pay ——— or Bearer, Dollars One thousand mex.

\$ #1000.00 #

Local Currency.

(Signed)

PEDRO CANTERO.

Indorsed on Back: Received, Gregorio Ramos.

Indorsed on Back, other end, with rubric.

64

MANILA, March 18, 1903.

No. 27287.

The International Banking Corporation, Manila.

Pay ——— or Bearer, Dollars Five hundred and twenty.

\$ #520.00 #

Local Currency.

(Signed)

PEDRO CANTERO.

Indorsed on Back: Received, Gregorio Ramos.

Indorsed on Back, other end, with rubric.

65

DEFENDANT'S EXHIBIT No. 35.

(Heading.)

In the Matter of the Guardianship of FRANCISCO MARTINEZ, a  
Prodigal and Incompetent.*Judgment of Prodigality and Incompetency and Order Appointing  
Guardian.*

And now, to wit, on this fourteenth day of November, A. D. 1903, this case coming on for hearing on the application or petition of Charles H. Smith, the duly appointed, qualified and acting Prosecuting Attorney for the City of Manila, Philippine Islands, in his official capacity and as the next friend of Francisco Martinez and Antonio Martinez, the minor son of said Francisco Martinez; and it appearing to the Court that a due and legal notice of such application and hearing has been served upon the said Francisco Martinez; and the said Francisco Martinez being present in court, in person and by his counsel, Fermin Mariano, and Early & White, and the petitioner being represented by Herbert D. Gale, Assistant Prosecuting Attorney in and for the City of Manila, Philippine Islands; and, after a full hearing and examination upon such petition, it appearing to the Court, from the evidence adduced upon such hearing

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and examination, and by the appearance, action, and statements of the said Francisco Martinez, that the allegations contained in said petition are true, and that the said Francisco Martinez, a resident of the city of Manila, Philippine Islands, is a prodigal and spendthrift, and is incapable of taking care of himself and managing his property; and it appearing to the Court that the said Francisco Martinez is a person about seventy years of age, mentally and physically infirm, and that he formerly possessed an estate, amassed by himself, amounting, in value, to more than one million pesos,

66 composed of a large amount of real property in the city of Manila and in the province of Batangas, Philippine Islands, as well as a large amount of personal property consisting principally of choses in action, steamers and sailing vessels which estate has, by reason of the mental infirmity and incompetency of the said Francisco Martinez, become incumbered and involved, and is now being rapidly dissipated and wasted; and it further appearing that during the last one and one-half years the said Francisco Martinez, not theretofore being a gambler, has become addicted to the habit of gambling, and has, during the said time, lost by such gambling a sum exceeding Two Hundred Thousand pesos; and it appearing that the said Francisco Martinez, has wasted and dissipated the income from said estate, amounting to, approximately, One Hundred and Twenty Thousand pesos per year; and that, during the last year, he has incumbered said estate in an amount approximating Two Hundred Thousand pesos; and that by reason of the mental and physical infirmity of the said Francisco Martinez, he has become the prey of unscrupulous persons; it is therefore the finding and judgment of this Court that the said Francisco Martinez is, and he is hereby declared, decreed and adjudged to be a spendthrift and a prodigal, and that he is mentally and physically incapable and incompetent to manage his estate or to care for himself; and it is therefore the determination of this Court that a guardian should be appointed for the person and property of the said Francisco Martinez, as provided by law.

And now, to wit, on this nineteenth day of November, 1903, the Court, having considered the qualifications of various persons presented and recommended for the office of guardian, hereby selects and appoints Charles C. Cohn, of the city of Manila, Philippine Islands, as the guardian of the person and estate of the said

67 Francisco Martinez conditioned upon the filing with the clerk of this court by the said Charles C. Cohn of a bond to the said Francisco Martinez for the faithful performance of his duties as such guardian, with good and sufficient sureties to be approved by this court, in the sum of Thirty Thousand (\$30,000.00) Dollars, United States currency, and further conditioned upon the filing with the clerk of this court by the said Charles C. Cohn of an oath that he will well and faithfully perform the duties of his said guardianship.

Upon the filing of said oath and upon the approval of said bond, letters of guardianship will issue herein to the said Charles C. Cohn, who will then take immediate possession and control of the person

and estate of the said Francisco Martinez, and manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, under order of the court, for the comfortable and suitable maintenance of the said ward and his family.

The said guardian is further directed to most closely and carefully scrutinize and investigate all claims against the said Francisco Martinez presented to him for payment, and to pay only such claims as shall be determined by said guardian, approved by this court, to be just and legal, and to actively resist the payment of all claims appearing to said guardian to be unjust and illegal.

The said guardian is hereby empowered to expend, from time to time, upon proper voucher approved by the court, such reasonable sums as may be necessary to keep in repair and conserve the property pertaining to the estate of his said ward.

The said guardian is further directed to render to this court, not later than the tenth day of each and every month, a full and detailed account of all moneys received and expended on behalf of his said ward for the preceding month, and to deliver a copy of said account to his said ward and to Charles H. Smith, Prosecuting Attorney for the city of Manila, Philippine Islands, who is hereby appointed guardian ad litem for the said Francisco Martinez, for the purpose of such accounting.

The said guardian is further directed to render an inventory and appraisal of the estate of his said ward as early as may be possible, and the Court hereby appoints as appraisers for said estate Henry Chandler and Basilio Regalado Mapa, both of the city of Manila, Philippine Islands.

The powers of attorney, of authorizations, heretofore executed by the said Francisco Martinez to Felipe Calderón, Firmin Mariano, Pedro Cantero, Ricardo Regidor, Vicente G. Azaola, or to any other person or persons, are hereby revoked and cancelled and said persons, and all other agents and representatives of said Francisco Martinez, of whatsoever character, except the guardian hereby appointed, are hereby enjoined and prohibited from collecting any sum due the said estate, and from paying out any moneys on behalf of said estate, and from incumbering or transferring any of the real or personal property pertaining to said estate, and from, in any manner, interfering in the administration, management or control of said estate, and all persons are hereby enjoined and warned from transacting business of any character with the said Francisco Martinez, personally, under penalty of contempt of this court.

And the said guardian is hereby further directed to cause to be recorded with the clerk of the Court of First Instance, and the Registrar of Deeds for the City of Manila, and with the clerk of the Court of First Instance, and the Registrar of Deeds for Batangas Province certified copies of the letters of guardianship issued herein.

Manila, Nov. 19, 1903.

(S'g'd)

JOHN C. SWEENEY, *Judge.*

(Heading.)

Case No. 2230. Prodigality.

In the Matter of the Application for a Guardian for FRANCISCO MARTINEZ, a Prodigal, by CHARLES H. SMITH, as Next Friend.

This case now comes on upon the application of Alfredo Chicote, an attorney at this bar, praying an appeal to the Supreme Court of the Philippine Islands.

On the trial of this case, the said Francisco Martinez was represented by Messrs. Early & White, attorneys at this bar. The Court adjudged the said Francisco Martinez, a prodigal and named Patrick J. Moore, an attorney at this bar, as guardian, but his appointment was not confirmed by decree of the court. In the meantime said Francisco Martinez appeared by a newly employed attorney W. A. Kincaid, and asked for the appointment of one Green as guardian, but the Court being of the opinion that Charles C. Cohn was a proper party to administer said estate, etc., appointed said Cohn as such guardian, of which appointment, the said Martinez entered of record in this court his approval and prayed the Court to appoint said Cohn also administrator of his, Martinez's, deceased wife.

The Court is satisfied that the said Martinez — in the hands of certain parties within the City of Manila, who have fleeced him recently of many thousands of dollars of his property, as well as cash, is like "clay in the potter's hands" and that it is through the influence of such individuals that this application is made for an appeal and that it is these parties who influence Martinez to employ different attorneys to, if possible, defeat a guardian to protect this estate, in order that they may further overreach and defraud this

70      old, enfeebled man of his estate, and that his application is not, in point of fact, made by Martinez himself, but by such interested parties and that said Martinez, being in his dotage is easily overreached, is not capable of employing counsel and determining the question of his appeal. It appears to the Court that the said Martinez within the last twelve months from time to time has had a great number of lawyers employed and that he employs some new attorney at the suggestion of most any one and especially of parties who have been defrauding him out of his estate. The Court, therefore, doth overrule and disallow the application for an appeal.

The Court refers to the statement of Sr. Chicote, the attorney who makes this application for appeal, made on the witness stand on this application, as showing who influenced his employment and this together with the evidence of many witnesses on the trial of this case which induced the Court to declare the said Martinez a prodigal and appoint a guardian for him shows the motive the parties have in influencing this unfortunate old man to resist a guardianship to protect his estate.

Dated December 31, 1903.

(Sgd.)

JOHN C. SWEENEY, *Judge.*

This 31st day of Dec. 1903, letters of notification of the foregoing decision have been sent to the parties for their information.

(Signed) R. HERAS,

*Ass't Clerk, Court of 1st Instance, Manila, P. I.*

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## DEFENDANT'S EXHIBIT No. 37.

*"Protest of a Promissory Note for Non-payment, Against Francisco Martinez, Entered at the Request of the Chinaman Chi Chu Sim.*

"For \$4,000\$.

"I hereby promise to pay in Manila, on the 31st of July, of this year, to the order of Manuel Ramirez, the sum of Four thousand pesos, Mexican currency, for value received in cash, without interest, to my entire satisfaction, for commercial transactions.

"Manila, April 17th, 1903."

(Signature apparently torn out.)

Indorsed: "Pay to the order of the Chinaman Oh Chu Sim. Manila, June 14th, 1903.

(Signed)

MANUEL RAMIREZ."

Indorsed: "Current on maturity. Manila, June 15th, 1903.

(Signed)

FRANCISCO MARTINEZ."

Indorsed: "Pay to the order of Lee Kee Cheeah, Manila, July 1, 1903."

(Signed)

OH CHU SIM.

Signature following:

"S. K. CHEEAH."

"UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

"In the municipality of the above-mentioned City, this first day of August, 1903, before me, Fernando de la Cantera, a notary public of this City, appeared:

"The Chinaman, Oh Chu Sim, a merchant, resident of this capital, of age, and exhibited to me a promissory note for protest for nonpayment, Don Francisco Martinez having failed to pay the same on maturity yesterday, which said promissory note is as follows:

"For \$4,000\$. I hereby promise to pay in Manila, on the 31st of July, of this year, to the order of Manuel Ramirez, the sum of Four thousand pesos, Mexican currency, for value received in cash, without interest, to my entire satisfaction, for commercial transactions. Manila, April 17th, 1903. Francisco Martinez. On the margin appears a revenue stamp for the value of P2.40.—Pay to the order of the Chinaman Oh Chu Sim. Manila, June 14th, 1903.—Manuel Ramirez. On the back:—Current on maturity. Manila, June 15th, 1903.—Francisco Martinez.—Pay to

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the order of Lee Kee Cheeah, Manila, July 1, 1903.—Oh Chu Sim.—There is a red seal as follows: Oh Chu Sim—some Chinese characters and the word "Manila" below."

The foregoing is a true copy of the original to which I certify.

Whereupon the undersigned at twelve o'clock noon, this first day of August, 1903, called at the house of Don Francisco Martinez, number 66 Calle Lavezares, and exhibited to him the aforesaid promissory note and demanded payment, whereupon he stated that he was unable to do so to-day because he had no money, and a similar demand having been made upon him the second and third time, he made the same reply.

"Whereupon the undersigned protested the said note for non-payment, after due notice to the said Martinez that he would be liable for all expenses and damages incurred to the Chinaman Oh Chu Sim.

"With this, the present act of protest was considered terminated, it having been signed by Francisco Martinez, to whom a copy of the same was delivered: and I so certify:

(Signed)

FRANCISCO MARTINEZ.

FERNANDO DE LA CANTERA,

*Notary Public.*

[NOTARIAL SEAL.]

My Commission expires on the first day of January, 1905.

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DEFENDANT'S EXHIBIT No. 38.

"Protest of a Promissory Note for Non-Payment, Against Francisco Martinez, Entered at the Request of the Chinaman See Kee Cheeah.

"For \$3,000\$.

"I hereby promise to pay in Manila, on the 15th of July, of this year, to the order of Manuel Ramirez, the sum of three thousand pesos, Mexican currency, value received in cash, without interest, to my satisfaction, for commercial transactions.

"Manila, April 11, 1903."

(Signature apparently torn off.)

Indorsed: "Pay to the order of the Chinaman Oh Chu Sim. Manila, June 14th, 1903.

(Signed)

MANUEL RAMIREZ."

Indorsed: "Current on maturity. Manila, June 15th, 1903.

(Signed)

FRANCISCO MARTINEZ."

Indorsed: Pay to the order of See Kee Cheeah. Manila July 1st, 1903.

(Signed)

OH CHU SIM.

Signature following:

"S. K. CHEEAH."



"UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

"In the municipality of the above-mentioned City, this 16th of July, 1903, before me, Fernando de la Cantera, a notary public of this City, appeared:

"The Chinaman, See Kee Cheeah, a merchant, unmarried, resident of this capital, and exhibited to me a promissory note for protest for nonpayment, Don Francisco Martinez having failed to pay the same, which said promissory note is as follows:

74 "There is a revenue stamp for P1.80.—

"For \$3,000\$

"I hereby promise to pay in Manila, on the 15th of July, of this year, to the order of Manuel Ramirez, the sum of three thousand pesos, Mexican currency, value received in cash, without interest, to my satisfaction, for commercial transactions.

"Manila, April 11, 1903."

FRANCISCO MARTINEZ.

Pay to the order of the Chinaman Oh Chu Sim.—Manila, June 14th, 1903.

MANUEL RAMIREZ.

Current on Maturity, Manila, June 15th, 1903.

FRANCISCO MARTINEZ.

Pay to the order of See Kee Cheeah, Manila, July 1st, 1903.

OH CHU SIM.

There is a red seal, as follows: "Oh Chu Sim, some Chinese characters, and the word "Manila" below."

The foregoing is a true copy of the original to which I certify.

Whereupon the undersigned at twelve o'clock noon, this 16th day of July, 1903, called at the house of Don Francisco Martinez, number 66 Calle Lavezares, and exhibited to him the aforesaid promissory note and demanded payment, whereupon he stated that he was unable to pay the same but that he would do so as soon as he had money, and a similar demand having been made upon him the second and third time, he made the same reply.

Whereupon the undersigned protested the said note for nonpayment after due notice to the said Martinez that he would be liable to the Chinaman See Kee Cheeah for all expenses and damages incurred.

With this, the present act of protest was considered terminated, it having been signed by Francisco Martinez, to whom a copy of the same was delivered: and I so certify:

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(Signed)

"

FRANCISCO MARTINEZ.  
 FERNANDO DE LA CANTERA,

[NOTARIAL SEAL.]

Notary Public.

My Commission expires on the first of January, 1905.

DON RICARDO:

Now that I can no longer talk with you personally because you are always so much occupied, that which I have to say to you I will put in writing. In the month of May you called me that I should work in the matter of Martinez in favor of the Bank and that the latter would recompense me very well. I have done so since then, thus accomplishing besides other works, that those who are assisting the enemies of the Bank and of you to pass over to our side, among them Isidro, being thus deflected the shots which they have prepared; which are serving as instruments to the old man who was agreeable thereto. This old man if he was not able to sign the last escritura in favor of the Bank, the blame is on Cantero who did not know how to play his part, because I have been able to bring the old man to this office three times and Cantero shouted at him and therefore he did not wish to sign. You should take into account that in order to secure this and to crowd the old man into doing that which he has done I have had to make him presents and loan him no small amount of money which I have no hope of collecting from him and there is no necessity for my remaining in Manila spending much money and waiting to involve myself in a law suit. For all this work the Bank has not given me yet the promised recompense, but on the contrary they have demanded a discount of 2,000 pesos in the transactions already agreed upon; that is, 1,000 pesos upon the promissory notes of Mascuñana and 1,000 pesos upon the two promissory notes of my own.

I beseech you that you direct that there be paid to me the value in a letter of deposit of 1500 pesos which is in your possession, because Christmas is coming and I have to send money to my family and return to Mindoro, if my services are no longer needed by you and the bank.

No Signature.

DON RICARDO:

I have observed in these last two months that if you have not attempted to dispense with me, at least you have become sufficiently cool and you wish to deal directly with the persons whom I have brought here and that all which has been accomplished up to the present time in the business is my work, because you know that in treating of laws you may surpass me in trickery, but I will be the second of him who says that he is the first, and also you should understand that I am a faithful servant and that with me, to whomsoever I join myself treating a business like this, I never separate myself, even though we should fall as from a precipice. In order that my work may be complete in this matter, I beseech you that you may give me a check for 1,000 pesos because I intend to make a

present to the wife of the old man and to other women who have helped in order that he might sign that which he had signed, and further, my family arrived yesterday from Mindoro and I have no money to sustain the expenses here in Manila. Be it a lie or the truth, the news which I received and transmit to you, you should not become angry because I tell you for your own action and not in order to frighten you, as you seem to think, when I communicate to you that which Isidro says. I am not accustomed to lie.

78 DEFENDANT'S EXHIBIT No. 41.

DON RICARDO:

Now that I need money more than ever is the time when you fail to give me a cent, and that too when you promised to pay me the letter of deposit of 1,500 pesos, of which I have already received a part. I beseech you to give me a check for 600 pesos, because I have a serious obligation to settle to-day. You will not lose anything if you pay me this amount inasmuch as there are 2,000 pesos which you have discounted against my will in our account, 1,000 pesos in the promissory notes of Mascuñana, and 1,000 of this in my favor.

If you cannot give me what I ask, tell me so at once frankly what there is in reference to this matter. You had best inform yourself of that which is stated in the enclosed, and tell me what I should answer.

79 DEFENDANT'S EXHIBIT No. 42.

FRIEND DON MANUEL:

You have promised us that whenever the escritura in favor of the Bank should be signed by the old man that we should receive thousands of pesos. Not only has the escritura referred to been signed two or three times, but also the liquidation of the account with said Bank of which we have not talked as the old man has said that he has not issued checks for more than 117,000 or 119,000 pesos and as we have already signed the conformity for 149,000 pesos we should call your attention to the fact that it is not necessary for us to secure the signatures in order that after difficulties of a thousand demons we should not receive more than the small alms which you gave after accomplishing that which you and Regidor desired. Nevertheless for our gratitude for the amounts which you have already given us even if it is a miserable sum when considered with reference to these accounts, we have succeeded in bringing the old man on Sunday morning in order to sign the new escritura and liquidate the accounts of the C. C. by Señor Regidor, but according to the porter this gentleman was not found, in his house and for that reason we did not go up.

We write you this letter because we are already dying from shame in frequenting the Casa Comision on account of the words of Señor V. Azaola who says that we do not go there except for the purpose of asking money from Señor Regidor and even though this is true it is not very charitable on the part of Regidor to give us if it does not

appear to him that we are serving him and in addition, that Regidor received the companion, Lontoc, with indifference at the time of the fiesta Saturday and when he came to ask at what hour he would bring the old man, which certainly he took to heart. We therefore notify you that in order to continue with us thus, we shall require a formal agreement, and in addition you must understand that we are fathers of families who abandon all of our own affairs for the orders of the old man and of Señor Regidor, and we are proceeding with very much calmness with the old man, in order to secure from the old man whatever it may be necessary that he should do, but as fathers of families we are obliged to hunt bread for our children and for that reason we cause it to appear that we already find ourselves arriving at the last word when we say more clearly that we expect money and answers because we have complied with our part and if the escritura is not yet well done, it is not our fault as we have told you and as it has been signed two or three times by the old man and by us as witnesses. We, therefore, hope that you will promptly answer.

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## DEFENDANT'S EXHIBIT No. 43.

Since yesterday we have sup-licated you that we have no money to spend, as you well know that we have abandoned our own affairs in order to always accompany the old man to secure that which we desire, and as we have already done. We beseech you that you not leave us in this situation, because not only the bearer but also myself are without a peseta. The favor which I ask you.

## DEFENDANT'S EXHIBIT No. 44.

MY DEAR AND RESPECTED SIR:

Excuse me for disturbing you so much from your affairs, my brother has said that according to the porter he return today, that you have said yesterday for the determination of my letter of yesterday, and as this brother does not know you yet, for that reason by means of this letter I send him back.

Yours respectfully,  
(Sgd.)

R. LONTOC.

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## DEFENDANT'S EXHIBIT No. 45.

DEAR SIR:

The bearer returns in accordance with your instructions to him that he should return at 3. I expect of you that you will deliver to the said bearer, who is person in my confidence, notifying you that I find myself to-day more dead than alive.

Yours truly,  
(Sgd.)

RAMON LONTOC.

## 83 DEFENDANT'S EXHIBIT No. 46.

"Know all men by these presents, That I, Francisco Martinez y Garcia, a resident of Manila, Philippine Islands, domiciled at No. 68 Calle Lavezares, District of Binondo, of legal age, thrice married, a merchant, as representative and administrator of the partnership with my first wife, Doña Germana Ilustre, hereby give and confer ample and sufficient power, and as much as may be necessary to the agent in this City of the International Banking Corporation, Mr. Robert Wemyss Brown of this City, of legal age, married, and a merchant, to collect for me and in my name the proceeds of the rents heretofore due or which may become due from the property of the aforesaid partnership of Martinez Ilustre, located in the municipality of Balayan, in the province of Batangas, and which are leased to the Government, the Quartermaster Department being responsible for the payments of the rent thereof, and for this purpose I hereby authorize the said Robert Wemyss Brown to collect in my name such checks or other documents as may be issued by the said Quartermaster Department in payment of the aforesaid obligation.

For this and other incidental matters, I hereby confer upon the said Robert Wemyss Brown the most ample power, ratifying and confirming whatever the said Robert Wemyss Brown may do under and by virtue of this power of attorney, to which I solemnly obligate myself.

In testimony whereof, after ratification of the foregoing instrument, I hereunto set my hand, this twelfth day of February, 1904.

(Signed)

FRANCISCO MARTINEZ.

In the presence of:

RAMON LONTOC.  
JULIO DUEÑAS.

84 "UNITED STATES OF AMERICA,  
*Philippine Islands, Island of Luzon, ss:*

"In the City of Manila, this twelfth day of February, 1904, before me personally appeared Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, which he ratified and acknowledged as having been executed of his own free will. He exhibited no registration tax certificate, he being exempt therefrom by reason of his advanced age.

"In testimony whereof, I have hereunto signed my name and affixed my seal of office on the day, month and year above-mentioned.

(Signed)

MANUEL TORRES,

[NOTARY'S SEAL.]

*Notary Public.*

My commission expires the first of January, 1905.

Señor Cantero.

MY DEAR SIR: Imposing upon your good will I again beseech you if it offers no inconvenience that you say to Don Ricardo Regidor that I have no money upon which to live this Holy Week, and that if he could give me something, I do not ask but only that which he believes sufficient for these days. Last night I was in his company, but I did not say anything to him because I am overcome with shame notifying you and Don Ricardo that I am disposed to serve them unconditionally. The favor which I your servant, ask

Respectfully,

J. DUEÑAS.

(Over.)

The bearer is my son. In case Don Ricardo cares to give me anything you can deliver the same to my said son. I await your answer.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

Señor Don Pedro Cantero, Present.

My dear sir and of my greatest respect:

Perhaps I molest you too much, but moved by the greatest necessity, I find myself obliged to remind you of that which Señor Regidor has promised, that when Señor Azaola could be present in the office he would grant that which they have promised to give me for many days. Therefore I beseech you to call to the attention of the last named gentleman, in order that he may understand if I may still have the hopes of receiving the same. In case of his being willing, you shall deliver the same to my brother. I await your answer. I am yours affectionately,

RAMON LONTOC.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

Señor Cantero.

DEAR SIR: The bearer is my son and I wish to know the result of my letter of this morning, and I beg of you to take interest in the same. I am at your orders and your servant who loves you.

DUEÑAS.

March 30, 1904.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

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## DEFENDANT'S EXHIBIT No. 50.

MARCH 29, 1904.

Señor Pedro Cantero, Present.

MY DEAR SIR: If with this letter I molest you from your many affairs the only object of it is to know of you the result of the favor which I asked of Don Ricardo. I do not wish to go there again, because Don Ricardo has said that it is not convenient that we should be seen there always. So that it is that by means of my brother I send you this, begging therefore that you should say to Don Ricardo that he grant me now that which he has promised, inasmuch as he has given to Dueñas that which corresponds to him. In case of accepting this petition, you can deliver to the bearer of this, who is my brother, because as a matter of fact I haven't a peseta for expenses. So I expect of you an answer to the favor which I have asked. Millions of thanks and I am at your orders, etc.

(Signed)

RAMON LONTOC.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

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## DEFENDANT'S EXHIBIT No. 51.

Don Pedro Cantero.

MY DEAR SIR: I beg of you to repeat to Don Ricardo the few pennies which I have asked, and which he promised to give me as soon as Señor Azaola entered in the office. Notifying you that I have nothing with which even to order a blind man to sing, while passing these days of the Holy Week. The prayer which I make to a friend. The bearer is my son to whom you can deliver that which you desire.

Yours affectionately,  
I wait an answer.

BUENAS.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

## DEFENDANT'S EXHIBIT No. 52.

Señor CANTERO:

Please do me the favor to say to Don Ricardo that the old man has arrived and been here since Saturday. He is not coming because he is sick.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

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Señor Don J. Danon.

DEAR SIR: Inasmuch as Don Francisco Martinez has not satisfied the promissory note issued to the order of Don Juan de la Luz, for 20,250 pesos, for value in account, you endorsed to me, and which on its maturity has been legally protested, and I having on the contrary, satisfied the same for your account to the International Banking Corporation by the payment of 12,000, I advise you that if I have transferred said document to Don Ramon Mascuñana, in order that he may collect the same from you or from whomsoever he may believe proper, said amount, returning to you the said document with the said protest.

I am yours respectfully,

(Signed with illegible mark.) S. F.

DEFENDANT'S EXHIBIT No. 54.

L. del Rosario has protested a promissory note against the old man for 20,000 pesos or more. Don't you know this? It would be well to notify the old man in reference to this nonsense. I do not know what he may have answered in the protest. I am awaiting your answer to my letter in reference to the check.

Señor Don Julio Dañon.

MY DEAR SIR: Don Francisco Martinez, not having satisfied the promissory note issued by him to the order of Don Juan de la Luz, and endorsed by you to Don Lorenzo del Rosario, who in turn has transferred the same to me, with the guarantee of his house which you gave to the bank for the balance of your account with the same, which was paid by the gentleman, I beg of you to tell me if you can pay said document within 24 hours, because on the contrary I shall register the escritura of your properties in my favor by transfer from the bank, without prejudice to my right to proceed against any other property which may belong to you. The necessity to procure funds for pressing attentions obligates me to take this step, which I very much regret.

"In the City of Manila, Philippine Islands, on the ninth of June, 1903, there gathered in the Office of Messrs. Montagne and Dominguez, attorneys-at-law, the said Montagne and Dominguez and Don Vicente Azaola, counsel-at-law, the former in representation of Don Pedro Martinez e Ilustre and the latter in behalf of Don Francisco Martinez y Garcia, and the International Banking Corporation, for the purpose of proceeding to make a partial partition and adjudication



of the property located in Manila as to which there is no controversy and which appeared in the inventory of the intestate estate of the deceased Doña Germana Ilustre, late wife of Don Francisco Martinez Garcia, and the mother of Don Pedro Martinez e Ilustre, and by common agreement lots were drawn by the interested parties for the choice of the property listed as numbers 1 and 2 on the sixth of May, 1903, that on list one falling to Pedro Martinez e Ilustre, and at on list two falling to Francisco Martinez y Garcia, with which result they agreed, at the same time also agreeing that both lists, under the name of the party to whom the property had fallen should be inserted in this instrument.

*List No. 1.*

(Property Allotted to Don Pedro Martinez e Ilustre.)

"Urban Property in the City of Manila.

Value		Monthly rental.
4,036.	House and Lot Calle Aceiteros y Hurtado 12 doors, Nos. 198 to 236.....	\$705.00
7,900.	House and lot, Calle Misericordia No. 180 and 182, with 7 doors, interior.....	180.00
9,700.	House and lot, Calle San Pedro, No. 57.....	60.00
5,600.	House and lot, Calle Noria, No. 35.....	80.00
8,236		
8,236.	Brought forward.	
3,400.	House and lot, Calle Dulumbayan, No. 113 to 117 .....	160.00
9,500.	House and lot, Calle Legaspi, No. 78.....	80.00
3,400.	Storehouse and lot, Calle Sta. Potenciana and Magallanes Nos. 173 and 136.....	105.00
5,000.	House and lot Calle San Nicolas, Nos. 122 to 147, and 139, interior, with 7 front front doors .....	319.00
	House and lot, Calle Elcano, No. 151.....	90.00
	House and lot, Calle Asuncion, No. 36.....	130.00
9,000.	House and lot, Calle Caballeros, Nos. 156 to 158 and 160, interior, with 3 front doors.....	120.00
	House and lot, 94, 96 and 98, Calle Sevilla....	111.00
7,700.	House and lot, Calle Barcelona, Nos. 115 and 117 .....	68.00
1,000.	Calle Espeleta, Nos. 87 to 93.....	180.00
1,000.	Steamer "Don Francisco" and pailebot "Mar-moques."	
2,236.		

*List No. 2.*

(Property Allotted to Don Francisco Martinez y Garcia.)

## "Urban Property in the City of Manila.

Value		Monthly rental.
28,000.	House and lot, calle Jaboneras y Barcelona, Nos. 31 to 36.....	\$390.00
5,000.	House and lot, two front doors, calle Eleano, Nos. 251 and 253.....	70.00
6,000.	House and lot, calle Principe, Nos. 98 to 100....	35.00
20,000.	House and lot, calle Barcelona, Nos. 139 to 149, 6 front doors, interior No. 135.....	350.00
16,000.	House and lot, calle Peñarubio, Nos. 14 to 22, five front doors .....	180.00
93		
6,000.	House and lot, calle Sevilla and San Nicolas Nos. 80, 82, 86 and 88.....	147.00
5,000.	House and lot, calle Sevilla and Peñarubia Nos. 141 and 145 and 24.....	114.00
16,000.	House and lot, calle Lavizeras, No. 68-76.....	170.00
12,000.	House and lot, calle Lara, No. 97 to 105, two houses .....	135.00
12,000.	House and lot, calle Barcelona, Nos. 81, 83 and 79 .....	145.00
6,000.	House and lot, calle Barcelona and Peñarubia, 151, 155 and 46.....	107.00
18,000.	House and lot, calle Barcelona and Peñarubia, Nos. 157 to 171, and 45, 47, with three doors interior No. 173 .....	340.00
4,500.	House and lot, calle Sevilla, No. 93, 95 and 97..	102.00
3,500.	House and lot, Calle Sevilla, No. 100, interior with 7 doors .....	76.00
35,000.	Steamer "Germana."	
193,000.		

The attorneys representing the parties interested in the aforesaid estate, considering that the property included in list one, as well as that included in list number two, is mortgaged to the International Banking Corporation under obligations contracted by Don Francisco Martinez y Garcia, have agreed that the said Bank cancel all the securities constituted upon the property enumerated in list number one, transfering the same to the property mentioned in list number two, or upon so much thereof as may be necessary to the satisfaction of the creditor to secure the lien heretofore existing on list number one.

It is further agreed by and between the parties that as soon as this proposed partition is approved by the court a copy of this instru-

ment be issued by the clerk of that court to each of the parties interested for their own use.

94 It is further agreed that Don Francisco Martinez y Garcia, as soon as the Bank has accepted the new securities and canceled the old ones, shall execute to his son the necessary deeds of transfer of the property enumerated in list one, so that he can have the same registered in his name in the Register of Property, all of this without prejudice to whatever rights Don Francisco Martinez y Garcia may have as surviving spouse with regard to the usufruct to which he is entitled under the law.

At the especial request of Don Pedro Martinez e Ilustre, it is expressly stated herein that he reserves the right to redeem the various properties sold, as well as any other right which may accrue to him by law.

And all the parties interested, as well as the attorneys who represent them, having expressed their conformity with the foregoing stipulation, they sign the same and further agree to present this to the Court of First Instance for approval, if proper.

(Signed)

FRANCISCO MARTINEZ.

"

PEDRO MARTINEZ.

"

A. A. MONTAGNE.

"

VICENTE G. AZAOLA.

"

For INTERNATIONAL BANK-  
ING CORPORATION.

R. W. BROWN, *Manager.*

A true copy:

(Signed)

S. CHOFRE,

[SEAL OF COURT.]

*Assistant Clerk Court of First  
Instance, Manila.*

95 We, Don Vicente Gonzales Azaola, as attorney appointed by Francisco Martinez y Garcia, and Messrs. Montagne and Dominguez, as attorneys appointed by Don Pedro Martinez e Ilustre, have proceeded to make a partition and a distribution of the property specified in lists numbers one and two, which are a part of the proceedings in the matter of the estate of the deceased Doña Germana Ilustre Gamis, in accordance with the agreement signed by the parties and of which mention will be made later on, without prejudice to — including at the proper time the rest of the property included in the inheritance or to recovering the same for the benefit of the estate and which shall be the subject of another partition, and for the purpose of carrying out the instructions received by us respectively, and have agreed upon the following bases:

#### First.

*Death and Declaration of Heir of Doña Germana Ilustre Gamis.*

It appears from the abintestate proceedings instituted in the former court of First Instance of Binondo that Doña Germana Ilustre Gamis died on the 31st of July, 1886, in the town of Balayan

of the province of Batangas, without a will; that her son, Don Pedro Martinez Ilustre, applied to the Court of First Instance of Batangas and instituted an action of voluntary jurisdiction to which an end was put by an order of the Court dated February 11, 1898, whereby the petitioner was declared to be the heir abintestate of his mother Doña Germana Ilustre Gamis, deceased, without prejudice to the right of usufruct which her surviving husband Francisco Martinez y Garcia had of one-third of the estate of his deceased wife.

96 It is stated in that order of the Court that Doña Germana Ilustre had contracted canonical marriage with Don Francisco Martinez y Garcia, as the result of which marriage only one legitimate son, Don Pedro, was born; that while married to the said Don Francisco Martinez y Garcia, she died in Balayan, without a will, her only son, Don Pedro, surviving her.

Considering that this was an abintestate proceeding, and considering the date of the dissolution of the conjugal partnership, the provisions of the Civil Code and the Code of Civil Procedure then in force relating to the subject shall serve as the basis for the liquidation and distribution of the inheritance.

### Second.

#### *Participants in the Inheritance.*

As above stated, Don Francisco Martinez married Doña Germana Ilustre Gamis who died July 31st, 1896, leaving as her only son Don Pedro Martinez Ilustre of legal age.

Under the law, therefore, the only persons interested in the estate of the deceased are Don Francisco Martinez y Garcia, as surviving spouse, and Don Pedro Martinez Ilustre, as their legitimate child.

### Third.

#### *Of the Conjugal Partnership.*

As would appear from the intestate proceedings above referred to, neither the deceased, Doña Germana Ilustre, nor her husband, Don

97 Francisco Martinez, brought any property to the conjugal partnership. Said partnership existed during the marriage and consequently all the property acquired by them up to the time of its dissolution by the death of Doña Germana Ilustre, should be considered as the property of the conjugal partnership and should be divided equally between her heir and her surviving spouse, as provided in section 1426 of the Civil Code.

As will be shown later on, the value of the urban property which is the subject of this partition, considered as community property, amounts to 321,236 dollars, Mexican currency, according to the last assessment made by the office of the assessor and collector of this province, producing a monthly rental of 4,749 pesos, excluding the steamers "Don Francisco" and "Germana," and the pilot boat "Mer-

moques," the value of which amount- to 65,000 dollars, Mexican currency, they being also included in this partition.

Therefore the total value of the property included in this partition is 386,236 pesos. The two parties interested in the inheritance having agreed in an instrument dated June 9th, last, that the value of the property included in the inventory is that fixed by the Office of the Assessor and Collector for the purposes of taxation, have also fixed the value of the two steamers and the pilot boat and have further agreed that certain property be assigned to them in payment of their respective shares, mutually waiving any difference that there may be in value.

So that, according to this agreement, the share of Don Francisco Martinez represents a total of 193,000 pesos, and that of his son 193,236 pesos, from which there shall be deducted the corresponding amount under the fourth and fifth paragraphs of this agreement.

98 Half of the difference between the two amounts, that is to say, 118 pesos, Don Francisco Martinez donates to his son Don Pedro.

#### Fourth.

##### *Determination of the Legal Portion.*

In paragraph two of this agreement, in referring to the participants in the inheritance it was said that Don Pedro Martinez only had a right to such portion of the estate as the law assigns to him, he thereby being entitled to two-sixths of the property enumerated in the inventory under section 808 of the Civil Code and to one-sixth, the usufruct of which remained in his father, Don Francisco Martinez, during the latter's lifetime, as provided in section 834 of the said Code.

The value of the property left by the deceased, according to the inventory, and which will be the subject of this partition, amounting to 386,236 pesos, his legitimate portion as agreed among the parties is 193,236 pesos, of which 128,794 pesos belongs absolutely to him, and 64,442 pesos, subject to the usufruct of his father.

#### Fifth.

##### *Determination of the Husband's Share.*

The share of Don Francisco Martinez is composed of one-half of the property acquired during his marriage with Doña Germana Ilustre, having an agreed value of 193,000 pesos, and the usufruct of the 64,442 pesos, which said amounts make a total of 257,442 pesos.

*How the Husband's Usufructuary Share Should be Paid.*

Don Francisco Martinez y Garcia, as the surviving husband of Doña Germana Ilustre is entitled under paragraph 1 of section 834 of the Civil Code to the usufruct of one-third of the estate, Don Pedro Martinez, his son, being vested with the title thereof, and upon the former's death title and usufruct both shall vest in the latter.

This one-third of the estate in the present case amounts to 64,442 pesos.

Now, under section 838 of the Civil Code that portion should be paid to the surviving spouse either in the form of an annuity or by paying to him a certain amount in cash which should be determined by the parties, or by assigning to him the products of certain specified property.

The last of these methods has been chosen by Don Francisco Martinez, with the agreement of his son, Don Pedro, it having been stipulated that the latter shall take charge of the administration of the property and pay monthly to the usufructuary one-third of the net proceeds of the property assigned to him under this partition, such payment to be made from the date on which the property was actually assigned and taken possession of by them.

To secure the fulfillment of this obligation, the real estate appearing in the inventory under numbers four, six and nine are hereby expressly pledged in the manner hereinafter set forth.

*Inventory and Valuation of the Property Which Is the Subject of this Partition.*

As has been said before, the surviving husband, Don Francisco Martinez and his son, Don Pedro, who is of legal age, have by common agreement made an inventory of the property which should be the subject of this partial partition, giving such property a conventional value, taking as the basis of such valuation that assessed thereon for the purposes of taxation, and more particularly the monthly rents thereof.

The undersigned attorneys in making up that inventory and stating the value of the property have described the titles as they now exist, and those which according to the parties have been lost but have not undertaken to cure the defects found therein nor to replace those which have been lost, so as not to delay this partition longer, such being the desire of the parties.

*Allotment of the Inventoried Property.*

The parties interested in this transaction being of legal age have validly entered into the contract evidenced by the instrument of June 9th, which is quoted below in connection with the allotment of the property.

101 In the City of Manila, Philippine Islands, on the ninth of June, 1903, there gathered in the Office of Messrs. Montagne and Dominguez, attorneys-at-Law, the said Montagne and Dominguez and Don Vicente Azaola, counsel-at-law, the former in representation of Don Pedro Martinez e Ilustre and the latter in behalf of Don Francisco Martinez y Garcia, and the International Banking Corporation, for the purpose of proceeding to make a partial partition and adjudication of the property located in Manila as to which there is no controversy and which appeared in the inventory of the intestate estate of the deceased Doña Germana Ilustre, late wife of Don Francisco Martinez y Garcia, and the mother of Don Pedro Martinez e Ilustre, and by common agreement lots were drawn by the interested parties for the choice of the property listed as numbers 1 and 2 on the sixth of May, 1903, that on list one falling to Pedro Martinez e Ilustre, and that on list two falling to Francisco Martinez y Garcia, with which result they agreed, at the same time also agreeing that both lists, under the name of the party to whom the property had fallen, should be inserted in this instrument.

*List No. 1.*

(Property Allotted to Don Pedro Martinez e Ilustre.)

"Urban Property in the City of Manila."

Value.		Monthly rental.
34,036.	House and Lot Calle Aceiteros y Hurtado 12 doors, Nos. 198 to 236.....	\$705.00
7,900.	House and lot, Calle Misericordia No. 180 and 182, with 7 doors, interior.....	180.00
9,700.	House and lot Calle San Pedro No. 57.....	60.00
6,600.	House and lot Calle Noria, No. 35.....	80.00
	Over.	
58,236.		
102		
58,236.	Brought forward.	
12,400.	House and lot Calle Dulumbayan, No. 113 to 117	160.00
9,500.	House and lot Calle Legaspi, No. 78.....	80.00
8,400.	Storehouse and lot, Calle Sta. Potenciana and Magallanes Nos. 173 and 136.....	105.00
35,000.	House and lot Calle San Nicolas Nos. 122 to 147, and 139, interior, with 7 front doors.....	319.00
	House and lot, Calle Elcano, No. 151.....	90.00
	House and lot Calle Asuncion No. 36.....	130.00
20,000.	House and lot Calle Caballerous Nos. 156 to 158 and 160, interior, with 3 front doors.....	120.00
	House and lot, 94, 96, and 98 Calle Sevilla....	111.00
7,700.	House and lot calle Barcelona, Nos. 115 and 117.	68.00
1,000.	Calle Espleta Nos. 87 to 93.....	180.00
30,000.	Steamer "Don Francisco" and pailebot "Marmesques."	
193,236.		

*List No. 2.*

(Property Allotted to Don Francisco Martinez y Garcia.)

"Urban Property in the City of Manila."

Value.		Monthly rental.
28,000.	House and lot calle Jaboneras y Barcelona, Nos. 31 to 36.....	\$390.00
5,000.	House and lot, two front doors, calle Elcano, Nos. 251 and 253.....	70.00
6,000.	House and lot, calle Principe, Nos. 98 to 100...	35.00
20,000.	House and lot calle Barcelona, Nos. 139 to 149, 6 front doors, interior No. 135.....	350.00
16,000.	House and lot, calle Peñarubia Nos. 14 to 22, five front doors.....	180.00
103		
6,000.	House and lot Calle Sevilla and San Nicolas Nos. 80, 82, 86 and 88.....	147.00
5,000.	House and lot calle Sevilla and Peñarubia Nos. 141 and 145 and 24.....	114.00
16,000.	House and lot calle Lavizeras, No. 68-76.....	170.00
12,000.	House and lot calle Lara, No. 97 to 105, two houses.....	135.00
12,000.	House and lot, calle Barcelona, Nos 81, 83 and 79.....	145.00
6,000.	House and lot, calle Barcelona, and Peñarubia, 151, 155 and 46.....	107.00
18,000.	House and lot calle Barcelona and Peñarubia, Nos. 157 to 171, and 45, 47, with three doors interior No. 173.....	340.00
4,500.	House and lot calle Sevilla No. 93, 95 and 97...	102.00
3,500.	House and lot calle Sevilla No. 100, interior with 7 doors.....	76.00
35,000.	Steamer "Germana."	
<hr/> 193,000.		

*Ninth.**As to the Rights of the International Banking Corporation in these Transactions.*

The undersigned attorneys taking into consideration that list number one as well as list number two, quoted in the preceding paragraph include the property which Don Francisco Martinez sold on condition of redemption to the International Bank, that is to say, the interest which he might have in such property, they hereby carry into effect the agreement entered into between the interested parties and the bank as evidenced by the instrument of June 9th last, whereby the contracting parties agreed that the property included in list number one should be released, substituting for it other prop-



erty included in list number two, so that the property allotted to Don Pedro Martinez should be absolutely free from such 104 incumbrance.

The material part of that document is as follows:

"The attorneys representing the parties interested in the aforesaid estate, considering that the property included in list one, as well as that included in list number two, is mortgaged to the International Banking Corporation under obligations contracted by Don Francisco Martinez y Garcia, have agreed that the said Bank cancel all the securities constituted upon the property enumerated in list number one, transferring the same to the property mentioned in list number two, or upon so much thereof as may be necessary to the satisfaction of the creditor to secure the lien heretofore existing on list number one.

"It is further agreed by and between the parties that as soon as this proposed partition is approved by the court a copy of this instrument be issued by the clerk of that court to each of the parties interested for their own use.

"It is further agreed that Don Francisco Martinez y Garcia, as soon as the Bank has accepted the new securities and canceled the old ones, shall execute to his son the necessary deeds of transfer of the property enumerated in list one, so that he can have the same registered in his name in the Register of Property, all of this without prejudice to whatever rights Don Francisco Martinez y Garcia may have as surviving spouse with regard to the usufruct to which he is entitled under the law.

105 "And all the parties interested, as well as the attorneys who represent them, having express- their conformity with the foregoing stipulation, they sign the same and further agree to present this to the Court of First Instance for approval, if proper.—Francisco Martinez.—Pedro Martinez.—A. A. Montagne.—Vicente G. Azaola.—For the International Banking Corporation, R. W. Brown, Manager.—A true copy: S. Chofre, Assistant Clerk, Court of First Instance, Manila."

The judge of Part III of the Court of First Instance of the City of Manila, on the 13th of June, last, approved the foregoing agreement, directing that Don Francisco Martinez execute such instruments as were necessary to transfer the title and the ownership of the real estate involved in this transaction in accordance with the agreement of the parties.

Pursuant to said agreement, Don Francisco Martinez y Garcia executed a certain instrument on the 15th of June last before the notary public, Vicente Azaola, wherein he promised among other things to sell to the International Bank on condition of redemption all the property allotted to him and described in list number two above referred to under the terms and conditions therein set out, the said Bank obligating itself to transfer to Pedro Martinez all the property described in list number one, free of liens and incumbrances, in consideration of the aforesaid promise and other promises contained in the said instrument.

The property included in list one is numbered in the inventory

1, 2, 3, 4, 5, 6, 9, 13, 15, 16, 17, 18, 23, 24, and 29; and that in list two 7, 8, 10, 11, 12, 14, 19, 20, 21, 22, 25, 26, 27, 28 and 30.

106

Tenth.

*Private Debts of Francisco Martinez.*

In addition to the purchase price of the property sold by Francisco Martinez to the International Bank on condition of redemption as set out in the inventory, Mr. Martinez has confessed and admitted in a notarial instrument dated the 11th of September, having executed four promissory notes for five hundred pesos each, making total of two thousand pesos, in favor of Jose Machuca, the first of which became due on the first of September and the others to become due on the same day of the months of October, November and December, but all of which, with the consent of the creditor are to be considered as due and payable at once, and the said Martinez agreed that the said notes be paid out of the amount due him as usufruct from his son, Don Pedro, since the latter took charge of the property specified in list number 1, so that, in the final settlement to be had between the parties Don Pedro Martinez shall be credited with the aforesaid amount of 2,000 pesos thus paid to Jose Machuca for his father, taking up the notes which shall be accounted for in the liquidation.

Eleventh.

*Partition Expenses.*

The undersigned attorneys having been charged with the execution of this work pursuant to the provisions of the aforesaid instrument of June 9th, last, which said work because of the peculiar nature of the property of the estate in question requires a knowledge of the law bearing upon the subject, and Don Vicente Azaola not having agreed with his client Don Francisco Martinez upon any particular fee for his services, he shall submit in due time his claim to the Court of First Instance so that the said Court may fix the compensation or percentage which may be deemed just and equitable.

Upon the foregoing basis we insert below a general inventory of the property with the estimated value of the same as follows:

*Inventory and Valuation of the Real Estate.*

1. One house of stone material with galvanized iron roofing, consisting of eight apartments, with twelve front doors and a storehouse adjoining the same, also of strong materials with a tile roof, used for the storage of merchandise, and the lot upon which they stand, formerly known as number nine, and at present as numbers 198 to 240, both inclusive, and list number one is accordingly amended. The property is bound on the front by calle

Acciteros of the District of Tondo of this City and is within the jurisdiction of the registry of property of the northern district of the City of Manila. It is now bounded on the right by a public street now known as Calle Antonio Hurtado, which is a prolongation of Calle Tavora; on the left with the house and lot of Florentino Basa and on the back by a lot without a number facing Calle Santa Elena, the property of Balbino Ventura. The above described property measures thirty-three yards in length by twenty-one in depth, having a superficial area of 578 meters and 40 centimeters, the entire land being occupied by the buildings aforesaid.

108 The original title deed of this property, not being available, no description of the same is herein given.

By a public instrument executed on the sixth of December, 1902, before Don Calixto Reyes y Cruz, a notary public, Francisco Martinez sold and transferred on condition of redemption to Gregorio Legaspi y Nieves, one-half of the property hereinbefore described for the sum of seven thousand pesos, repurchase to be made within six months from the date of the execution of said instrument, such period being extendable for one year.

By another instrument, executed on the twelfth of January of the current year, 1903, before the notary public, Vicente Azaola, the said Francisco Martinez y Garcia sold, for a valuable consideration, to-wit, seven thousand pesos, to the legal representatives of the International Banking Corporation the right of repurchase which he had as to one-half of the property above described.

A record of this transaction insofar as it affected the Bank, was made in the registry of property at page 73, volume 13, District of Tondo, 49 of the Archive, property No. 880, third inscription.

From a public instrument executed on the 29th of May, last, before the notary public, Vicente Azaola, it appears that the Bank made use of the right of redemption sold to it by Francisco Martinez by paying the price of seven thousand pesos to Gregorio Legaspi Nieves, a record of this transaction having been made at page 113, volume 4, District of Tondo, property No. 880, duplicate, sixth inscription.

109 In a public instrument, executed before the notary public, Vicente Azaola, on the 15th of June last, the legal representative of the International Bank obligated himself to sell to Pedro Martinez all the houses, half of which had been previously sold or mortgaged to the Bank as the property of Francisco Martinez and to deliver the same to him free of all burdens and encumbrances under the conditions therein stipulated, one of

which was the acknowledgment of an indebtedness of Francisco Martinez in the sum of seven thousand pesos for the repurchase of the property in question.

So that, the International Bank upon the completion and approval of these partition proceedings shall deed to Don Pedro Martinez one-half of the said property which is included in list number one in accordance with their agreement.

According to the aforesaid list number one, the monthly rental of the said property is seven hundred and five pesos, this property having been assessed by the office of the Assessor and Collector in the sum of 4036 pesos, such being the value given it in this instrument in accordance with the provisions of the instrument of June ninth, last . . . . .

34,036.

2. Another house and seven apartments on the back of the same, built of strong materials and the lot upon which it stands, comprising a single piece of property, and numbered 42 under the former government and 180 to 182 under the present Government, which property is the same appearing on list number one, bounded in front by calle Misericordia of the District of Santa Cruz and

within the jurisdiction of the registry of property 110 of the northern district; on the right by the house of strong materials, number four, of Santos Donato; on the left by an apartment house of strong materials, number 44, belonging to Francisco Bautista, and on the back by the river Sibacon. The lot is 15 meters and 91 centimeters long, by 38 meters and 51 centimeters deep, and having a superficial area of 612 meters and 69 centimeters, the house occupying 168 square meters and the apartment house 130 meters and 43 centimeters thereof.

This property is recorded in the register of property at page 175, volume 5 of the District of Quiapo, and 50 of the Archives, block number 223.

According to a certificate issued by the Registrar of Property on the 23rd of March, last, which is the only document before us, the property in question was acquired by Francisco Martinez by purchase from Pedro Sanchez y de la Cruz, free of all liens and incumbrances, for the sum of seven thousand six hundred pesos, as per public instrument executed on the 14th of September, 1894, before the notary public, Calixto Reyes y Cruz.

By a public instrument executed on the 23rd of March of the present year, 1903, before the notary public Vicente Gonzalez Azaola, the said Francisco Martinez y Garcia sold to the International Bank one-half of the property in question for the sum of four thousand pesos on condition of redemption to extend to the thirtieth of June of the same year. This conditional sale was re-

corded in the register of property on the 20th of April, at page 196, volume 3, of the District of Quiapo, property number 223, triplicate, third inscription.

111 By a public instrument executed before the notary public, Vicente Gonzalez Azaola, on the 15th of June last, the legal representative of the International Bank undertook to sell to Pedro Martinez all the houses, half of which had been previously sold or otherwise mortgaged, as the property of Francisco Martinez, and to deliver the same to him free of all liens and incumbrances, under the conditions stipulated by the contracting parties, one of such conditions being the acknowledgment of an indebtedness to the Bank of Francisco Martinez including the purchase price of the property sold with the privilege of redemption.

So that the International Bank, upon the completion and approval of these partition proceedings shall deed to the said Pedro Martinez half of the aforesaid property, the same being included in list number one and which was allotted to him in accordance with the agreement hereinbefore mentioned.

According to said list the monthly rental of this property is 180 pesos, it having been assessed by the office of the Assessor and Collector in the sum of seven thousand nine hundred pesos, Mexican currency, and this is the value which will be given it in these proceedings in accordance with the instrument of the ninth of June last. .

7,900

Another house of strong materials with galvanized iron roofing, consisting of two rooms on the ground floor and two on the upper floor, and the lot upon which the same stands, on calle Ezpeleta of the District of Santa

112 Cruz of this City, within the jurisdiction of the Registry of Property of the northern district, numbered 4, 6, 8, and 10, which numbers have been changed to the present numbers, 87 to 93, this being the same property appearing on list number one, bounded on the right by property number four of Sabas del Rosario, on the left with lot number eight, belonging to Isabel Carlota, and on the back by lot number seven abutting on an alley without name belonging to Silvino Mapua. The lot occupied by the said building has a superficial area of 320 meters and 45 centimeters.

The original title deed not being available, no description of the same is given.

By a public instrument executed on the sixth of December, 1902, before the notary public, Calixto Reyes y Cruz, the said Francisco Martinez sold with the right of redemption to Don Gregorio Legaspi y Nieves, one undivided half of the property above described for the sum of two thousand pesos, repurchase to be made within six months from the date — execution thereof, such privilege of repurchase being extendable for one year.

By another instrument dated February 12th of the present year, executed before the notary public Vicente G. Azaola, the aforesaid Don Francisco Martinez y Garcia sold for a valuable consideration, to-wit, two thousand pesos, to the legal representative of the International Banking Corporation the right which he had to repurchase the property in question.

A record of this transaction was made in the Registry of Property at page 191, volume 16, of the District of Quiapo, and 39 of the Archives, lot numbered 113 nine hundred and twelve, fourth inscription.

By a public instrument executed on the 29th of May, last, before the notary public Vicente Azaola, the International Bank made use of the right of redemption transferred to it by Francisco Martinez by paying the price of two thousand pesos to Gregorio Legaspi y Nieves, a record of this transaction having been made at page 192, volume 16 of the District of Quiapo, and 39 of the Archives, lot number 912, fifth inscription.

By another instrument executed before the notary public Vicente Azaola on the 15th of June, last, the legal representative of the International Bank obligated himself to sell to Pedro Martinez all the houses a half interest in which had previously been sold or mortgaged as the property of Francisco Martinez, and to deliver the same to the said Pedro Martinez free of any and all liens and incumbrances under the conditions stipulated therein, one of which was the acknowledgment of an indebtedness on the part of Francisco Martinez in the sum of two thousand pesos, the amount paid for the repurchase of the property in question.

So that the International Bank, upon the completion and approval of these partition proceedings shall deed to the said Pedro Martinez a one-half interest in the property above described, the same being included in list number one, in the manner agreed, between the parties.

According to said list the monthly rental of that property is 180 pesos, Mexican currency, it having been assessed by the office of the Assessor and Collector 114 in the sum of eleven thousand pesos, this being the value given it in these partition proceedings in accordance with the document of June 9th of the present year . . . . . 11,000

4. Another house and lot on calle Legaspi, Intramuros, formerly number 17 and at present number 78, the same being the number given it in list number one, bounded on the right and back by the house and lot of Eduardo Litonjua and on the left by the house and lot of Jose Celis. This property is 14 meters and 48 centimeters long by 18 meters deep, having a superficial area of 260 meters and 64 centimeters.

The original title deed of this property not being available, no description of the same is given.

By a public instrument dated April 7th of the present year, 1903, executed before the notary public Vicente Azaola, Don Francisco Martinez y Garcia, sold to the International Bank, represented by Robert Wemyss Brown a one-half interest in the property above described for the sum of 1,500 pesos, with the right of redemption which the vendor reserved to himself upon the repayment of the purchase price on or before the 30th of June of the present year.

This conditional sale was recorded in the registry of property on the 20th of April at page 180, volume 1, book 3 of the District of Intramuros, lot number 131, third inscription.

By a public instrument executed before the notary public, Vicente Azaola, on the 15th of June last, the legal representative of the International Bank agreed to sell to Pedro Martinez all the houses a one-half interest in which had been theretofore transferred or mortgaged as the property of Francisco Martinez y Garcia, and to deliver the same to the said Pedro Martinez free of any and all liens and incumbrances under the conditions stipulated therein, one of which was that the said Pedro Martinez should acknowledge an indebtedness to the Bank on the part of Francisco Martinez, which said indebtedness included the purchase price of the property with the right of redemption.

Under the aforesaid deed therefore the International Bank, upon the completion and approval of these partition proceedings shall deed to Pedro Martinez a one-half interest in the aforesaid property, the same being included in list number one, which contains all the property allotted to him in accordance with the agreement between the parties.

According to the said list, the monthly rental of the property is 80 pesos, it having been assessed by the office of the Assessor and Collector in the sum of 9,500 pesos Mexican currency, which is the value given it in these partition proceedings in accordance with the instrument of the ninth of June, last.

9,500

5. Another house and lot on calle Magallanes, Intramuros, formerly numbered 31 and 33 but now numbered 72, and formerly number 7 and at present number 133, 142, 136, 172, and 188, it appearing on list one under numbers 173 and 136 of Calle Sta. Potenciana; bounded on the right with the house and lot of Doña Manuela Molina, widow of Grey, and on the left and back by the house and lot of Father Juan Adrian.

The original title deed of this property not being available, no description of the same is given.



By a public instrument dated March 23rd, 1903, executed before the notary public Vicente Azaola, 116 Don Francisco Martinez y Garcia transferred to the International Bank, represented by Robert Weymuss Brown, a one-half interest in the property above described for the sum of five thousand pesos, Mexican currency, with the right of redemption reserved to the vendor upon the repayment by him of the purchase price on or before the 30th of June of the same year.

This sale was recorded in the registry of property on the 15th of April at page 132, volume 1, book 4 of the District of Intramuros, lot number 161, 39th inscription.

By another instrument executed before the notary public, Don Vicente Azaola on the 15th of June last, the legal representative of the International Bank, agreed to sell to Pedro Martinez all the houses a one-half interest in which had already been sold or mortgaged as the property of Francisco Martinez Garcia, and to deliver the same free of all liens and incumbrances under the conditions stipulated by the parties, one of which is the acknowledgment by the said Pedro Martinez of an indebtedness to the Bank on the part of Francisco Martinez, including the purchase price of the property in question.

The International Bank by virtue of the said instrument upon the completion and approval of these partition proceedings, shall deed to the said Pedro Martinez a one-half interest in the property in question, the same being included in list number one, in conformity with the agreement made by the parties.

According to the said list, the monthly rental of the property in question is 105 pesos, Mexican currency, it having been assessed by the office of the Assessor 117 and Collector in the sum of eight thousand four hundred pesos, this being the value given it in these proceedings in accordance with the instrument of June 9th, last. . . . .

8,400

6. Another house consisting of four apartments, with nine front doors and the lot upon which it stands, formerly numbered 40 and at present numbered 122 to 147, 139 interior, these being the numbers under which it appears in list one, bounded on the front by Calle San Nicolas of the district of Binondo, within the jurisdiction of the northern district of the register of property; on the right by a vacant lot number 38, belonging to Antonio Aguirre; on the left by Calle Madrid, and on the back with the house and lot number 30, belonging to Maria Bustamante, abutting on the said Calle Madrid. The lot in question has a superficial area of six hundred and forty-four square meters and



five hundred and sixty-six milimeters, as appears from a certificate issued by the Register of Property on the sixteenth of March, last, this being the only document before us. This property was acquired by Francisco Martinez by purchase from Bonifacio Bustamante for the sum of fourteen thousand pesos, according to a public instrument executed on the fourteenth of November, 1894, before the notary public Calixto Reyes y Cruz.

By a public instrument dated on the 13th of February of the present year, 1903, executed before the notary public, Vicente Azaola, the said Francisco Martinez y Garcia, transferred to the International Bank the above described property for the sum of fourteen thousand pesos, with the right of redemption on or before 118 the 30th of June of the same year.

By an additional instrument executed on the 6th of March of the same year, before the notary public who authorized the former one, Francisco Martinez on one side and the representative of the International Bank on the other, agreed that only one-half of the above described property and not the whole of it should be considered as sold for the reason that the other half belonged to the conjugal partnership of Da. Germana Ilustre.

This conditional sale of one-half of the property was recorded in the register of property on the third of March, last, at page 66, volume nine, of the district of Binondo, 27 of the archives, lot number 432, fifth inscription.

By another instrument executed before the same notary public, Vicente Azaola, on the 15th of June last, the legal representative of the International Bank undertook to sell to Don Pedro Martinez all the houses a half interest in which had already been sold or mortgaged to the Bank as the property of Francisco Martinez y Garcia, the Bank obligating itself to deliver the said property to Don Pedro Martinez free of any lien or incumbrance under the conditions stipulated in the said instrument, one of which conditions was the acknowledgment on the part of Don Pedro of a certain indebtedness contracted by Don Francisco, which said indebtedness included the purchase price of the property above-mentioned.

In pursuance of the said agreement, the International Bank represented by Mr. Robert Wemyss Brown, upon the final settlement and approval of these partition proceedings shall execute a deed of sale conveying to Don 119 Pedro Martinez a one-half interest in the property in question, the same being included in list number one in accordance with an agreement between the parties.

According to the said list, the monthly rental of the said property is three hundred and nine pesos, and the assessed value is thirty-five thousand pesos, which is the value given it in these partition proceedings in accordance with the stipulation contained in the instrument of June ninth ..... 35,000

7. Another house of strong material and the lot upon which it stands, formerly numbered 26 and at present numbered 98 to 100, these being the numbers under which it appears in list number two, situated in calle Principe, District of San Nicolas, Binondo, of this City and within the jurisdiction of the register of property of the northern district; bounded at present on the right by the house and lot numbered 24, belonging to Ponciano Reyes; on the left by the house and lot numbered 28 on the same street, belonging to Antonio Basa, and on the back with the lot of Flaviano Abreu.

The above described property has a frontage of seven meters and ninety centimeters, on the right the boundary is formed by three straight lines the first being two meters and sixty-eight centimeters, the second five meters and sixty-one centimeters, and the third five meters and twenty-eight centimeters; on the left it is bounded by a straight line of eleven meters and thirty-one centimeters and on the back by another straight line of thirteen meters and ten centimeters, the superficial area being one hundred and five meters and ninety-three centimeters.

The above described property was acquired by Francisco Martinez, who purchased the same from Eduardo Litongua for the sum of ten thousand pesos, Mexican currency, as shown by a public instrument executed before the notary public of this city, Calixto Reyes y Cruz on the twelfth of March, 1895, a record of this transaction having been made in the register of property of the northern district at page one, book three, of the District of Binondo, municipality of Manila, lot number 565, second inscription, on the fifteenth of that month and year.

By a public instrument executed on the 23rd day of March of the present year, 1903, before the notary public Don Manuel Torres, the said Francisco Martinez y Garcia, sold and transferred to the International Bank, represented by Robert Wemyss Brown, one undivided half of the said property for the sum of six hundred pesos, the vendor reserving the right to redeem the same upon payment of the purchase price on or before the thirtieth of June of the present year.

This sale was recorded in the register of property on the eleventh of April, at page 152, volume 11, of the

District of Binondo and 35 of the Archives, lot number 563, third inscription.

By another instrument executed before the notary public, Vicente Azaola, on the fifteenth of June last, the legal representative of the International Bank, agreed to extend the time for the redemption of the property under the conditions therein stipulated, Don Francisco Martinez therein agreeing in turn to sell to the aforesaid Banking Corporation the entire  
121 property above described, as well as the other property allotted to him in the partition proceedings.

In pursuance of the said agreement, and upon the completion and approval of this partition, Don Francisco Martinez, shall sell, with the right to redeem, to the International Bank, the property above described for the sum, and within the time stipulated, the contracts heretofore entered into remaining in the meantime in full force and effect, as stipulated in the instrument of the ninth of June last.

According to list two, the monthly rental of the property in question is thirty-five pesos, and the assessed value of the same six thousand pesos, this being the value given it in these partition proceedings in accordance with the aforesaid instrument of the ninth of June, last .....

6,000

8. Another house of strong materials, with a tile roofing, a warehouse adjoining the same, also with a tile roof, and the lot on which the two buildings stand, said lot having a superficial area of five hundred and seventy-six square meters and ten centimeters, four hundred and fifty square meters of which are occupied by the house, and ninety square meters and twenty-four decimeters being occupied by the warehouse. This property is situated on the corner of Calles Barcelona and Jaboneras of the District of Tondo, within the norther-demarcation of the registry of property: is bounded on the front on the east with the said Calle Barcelona, on the right, that is, on the south, with the storehouse of

122 Alla Boyle, on the left, that is, on the north by Calle Jaboneras, and on the back, that is to say on the west, by the warehouse of Mr. Enchen, the house being numbered 53 on Calle Jaboneros, and numbered 17 on Calle Barcelona, formerly, and at present 31 to 44 respectively, the property appearing in list number two under numbers 31 to 36.

The aforesaid property was acquired by Don Francisco Martinez by purchase from Enes Custodio y Castro for the sum of three thousand, two hundred pesos, free of all liens and incumbrances, as shown by a public instrument executed in this city on the 16th of August, 1904.

This transaction was recorded in the registry of property at page 124, volume 10 of the District of Binondo, and 30 of the Archives, second inscription, lot number 502.

It so appears from a certificate issued by the Registrar of Property on the 19th of March, 1903, this certificate being the only document which we have before us.

By a public instrument numbered 23 executed on the 13th of January of the present year before the notary public Jose Maria Rosado, Don Francisco Martinez y Garcia, as judicial administrator of the estate of Martinez Ilustre, mortgaged the aforesaid property together with other property situated in Calles Elecano and Cabellero, hereinafter described, to Don Rafael Reyes, Malate, as the general manager of "El Veradero de Manila" for the sum of 30,000 pesos, which was the cost of the repairs made upon the steamer "Don Francisco" by authority of the Court.

This mortgage having become due and payable on the 15th of March of the present year, the said Don Francisco Martinez, in his capacity as administrator of the said estate of Martinez e Ilustre, as aforesaid, by

123 a public instrument executed on the second of June last before the notary public Vicente Azaola mortgaged the said property to the International Bank, the latter being represented by Robert Wemyss Brown, for the sum of eight thousand dollars, United States currency, at eight per cent. per annum, on condition that the said amount and accrued interest should be returned on the second of October, following, the mortgage to be continued in force if the creditor did not demand the fulfillment of the obligation. This transaction was not recorded in the register of property.

As aforesaid, this obligation was contracted by Francisco Martinez as administrator of the estate of Martinez e Ilustre by competent authority, and this transaction having redounded to the benefit of the parties in interest, they should be held jointly liable for the obligation.

However, as the steamer "Don Francisco", the origin of the obligation, was allotted to Don Pedro Martinez and the property above described together with the other property hereinafter mentioned was liable for the obligation, and the property in question having been assigned to Don Francisco, the parties have mutually agreed that the security thus given should be continued in its present form, the security to be released by funds from the administration, both participants being, nevertheless responsible in any event for one half each of the amount of the mortgage.

According to list number two the monthly rental of this property is three hundred and ninety pesos, the

124 assessed value being twenty-eight thousand pesos,  
this being the value given it in these partition  
proceedings ..... 28,000

9. Another house of strong material, with three front doors on Calle Caballeros of the District of Binondo, northern demarcation of the register of property and at present numbered 158 and 160, and bearing numbers 156, 158 and 160 in list number one.

This property, together with that which is hereinafter described, is bounded on the right by house number 65, belonging to Sister Asunción Ventura Hocorma, represented by Maria del Rosario; on the left by house number 71 belonging to the heirs of Luciano Romero, namely, Doña Potenciana, wife of Julio Margarejo, Doña Isabel and Don Ventura, represented in this city by the administrator of the property Don Vicente Lasa; and on the back by Calle Caballeros.

The aforesaid lot, together with the one hereinafter inventoried, is a paral-ellogram, is of eight meters and fourteen centimeters long by thirty-three meters and forty-three centimeters deep, and has a superficial area of two hundred and seventy-two square meters and twelve aquare centimeters.

The original titles to this property are not at hand.

By a public instrument, numbered 23, executed on the 15th of January in the present year, before the notary public Jose Maria Rosado, Don Francisco Martinez y Garcia mortgaged the above described property together with the one hereinafter mentioned and another piece on

125 Calle Barcelona, corner of Calle Jaboneros, to Rafael Reyes Malate as the general manager of "El Varadero de Manila," for the sum of 30,000 pesos, the cost of the repairs made on the steamer "Don Francisco" by judicial authority.

The mortgage having become due and payable on the 13th of March of the present year, Francisco Martinez, as the judicial administrator of the partnership of Martinez é Ilustre, by a public instrument executed on the second of June last before the notary Don Vicente Azaola, canceled that obligation, substituting it with another one in favor of the International Bank for the sum of five thousand dollars, United States currency, with interest at the rate of eight per cent per annum, by mortgaging the property in question and property following to secure the aforesaid sum, interest and expenses, the said amount to be repaid on the second of October following, otherwise the mortgage to continue in full force and effect provided the creditor did not exact the fulfillment of the same. This transaction was not recorded in the registry of property.

As has been said, the obligation was contracted by Francisco Martinez as administrator of the estate of

Martinez é Ilustre, with competent authority. Therefore, the transaction having redounded to the benefit of the parties interested in the said estate, they must be equally responsible therefor.

But, considering that the steamer "Don Francisco" was the origin of the obligation, and was allotted to Don Pedro Martinez that the property above described, together with the one hereinafter described, is liable

126 for the five thousand dollars, without specifying the amount for which each is liable, both properties having been mortgaged as one, although the one here in question fell to Don Pedro and the other together with the property on the corner of Barcelona and Jaboneros to Don Francisco, the three pieces being liable for the obligation, and that it is impossible to ascertain the extent of the liability of each piece, the contracting parties have agreed to leave the security in its present form, the same to be released at the proper time with the funds of the administration, both participants in the estate being in any event liable for one-half of the amount represented by the mortgage.

According to list number one, the monthly rental of this property together with other property specified in the said list is one hundred and twenty pesos, and the assessed value is twenty-thousand pesos, and this is the value given to it here.....

P20,000.00

10. Another house of strong materials, with two front doors, situated on calle Elcano and numbered 251 to 253 of the District of Binondo, demarcation of the registry of property of the northern district, taken together with the property hereinbefore described, said property being bounded on the right by house No. 65 belonging to Sister Asunción Ventura Hocorna, represented by María del Rosario; on the left by house No. 71, belonging to the heirs of Luciano Romero, Doña Potenciana, the wife of Julio Margarejo, Doña Isabel and Don Ventura who are represented in this city by the administrator of the property, Vicente Blasa; and on the back by Calle Caballeros.

127 This lot, together with the property above described, forms a parallelogram of eight meters and fourteen centimeters by thirty-three meters and forty-three centimeters, making a superficial area of two hundred and seventy-two square meters and twelve centimeters.

The original title of this property is not at hand.

By a public instrument, executed on the fifteenth of January of the present year before the notary public Jose María Rosado, the said Francisco Martinez y Garcia mortgaged this property, together with the one hereinbefore described and the property on Calle Barcelona, corner of Jaboneros, in favor of Rafael Reyes Malate as

general manager of "El Varadero de Manila" for the sum of thirty thousand pesos, the cost of the repairs made on the steamer "Don Francisco" with the authority of the Court.

The mortgage having become due and payable, on the fifteenth of March of the present year Francisco Martinez, as judicial administrator of the partnership of Martinez é Ilustre, by a public instrument executed on the second of June last before the notary public Vicente Azaola, canceled that obligation, substituting the same with another undertaking in favor of the International Bank for the sum of five thousand dollars, United States, currency with interest at the rate of eight per cent per annum, pledging the property in question at the one hereinbefore described as security for the payment of

that sum, interest and expenses, the said sum  
128 to be repaid on or before the second of October following, otherwise the mortgage to continue in full force and effect unless the creditor demanded the fulfillment of the obligation. Not recorded in the register of property.

As has been said, this obligation was contracted by Francisco Martinez, as the administrator of the estate of Martinez é Ilustre with competent authority. Therefore, this transaction having redounded in favor of those interested in the said estate, each should be responsible for one-half thereof.

But, inasmuch as the steamer "Don Francisco," the origin of the obligation, was allotted to Pedro Martinez, and considering that the above described property, together with the one preceding it, is liable for the five thousand dollars, without the amount for which each is liable being specified, they having been mortgaged as a single piece of property, and as the property here in question was allotted to Don Francisco and the previous one to Don Pedro, the two pieces of property, together with that on Calle Barcelona, corner of Jaboneros, which is also allotted to Francisco Martinez being equally liable for the obligation, the contracting parties have agreed to continue the said security in its present form, the same to be released at the proper time with the funds of administration, both participants in the estate being in any event liable for one-half of the amount represented by the mortgages given to secure the total obligation.

According to list number two, the monthly rental of the property in question is seventy pesos, and the assessed value is five thousand pesos, which is the value  
129 given to it in these partition proceedings. . . . .

5,000

Another house of strong materials, with galvanized iron roof, and the lot upon which it stands, numbered 23 formerly, and included in list number two



under numbers 141, 145 and 24, bounded on the front by Calle Sevilla, District of Binondo, demarcation of the northern district, on the right by Calle Peñarubia, on the left by the lot of Tomasa Ramirez, the number of which is not given, and lot number 41, belonging to Agustin de los Reyes, and on the back by the lot numbered 27, belonging to Juan Antonio, the said lot abutting on Calle Peñarubia. The lot occupied by this property has a frontage of nine meters and sixty centimeters, measuring twelve meters and fifty centimeters on the right, fourteen meters and sixty centimeters on the left, and eleven meters on the back, with a superficial area of one hundred and sixty square meters and sixteen centimeters, it measuring four meters across at the junction of the streets.

The above described property was acquired by Francisco Martinez by purchase free of all liens and incumbrances from Doña Justa Marquez y Rea for the sum of two thousand eight hundred pesos, as evidenced by an instrument executed by the parties on the sixteenth of August, 1890, before the notary public Calixto Reyes y Cruz.

This transaction was recorded at page 193, volume 9, district of Binondo, and 27 of the Archives, lot number 456.

By a public instrument dated March 23rd, 1903, executed before the notary public Vicente Azaola, Francisco Martinez y Garcia sold to the International Bank a one-half interest in the property in question for the sum of one thousand, five hundred pesos, with the right to redeem the same on or before the thirtieth of June of the same year. This conditional sale was recorded at page 193, volume 9, District of Binondo, and 27 of the Archives, lot 456, third inscription, on the eleventh of April of the present year.

By another instrument executed before the same notary public, Vicente G. Azaola, on the fifteenth of June last, the legal representative of the International Bank, agreed to extend the time for the redemption of the property upon the conditions stipulated in the said instrument, Don Francisco Martinez in turn obligating himself to sell to the Bank the whole of the said property, together with the other property that fell to him in the partition proceedings.

In pursuance thereof, and upon the completion and approval of the said partition proceedings, Don Francisco Martinez hereby promises to sell, with the right to redeem, to the International Bank, the above described property for the price stipulated, the contracts heretofore entered into under the instrument of June ninth, last, remaining, in the meantime in full force and effect.



According to list number two, the monthly rental of the property in question is one hundred and fourteen (114) pesos, the assessed value of the same being five thousand pesos, which is the value given it in these proceedings in accordance with the agreement of June ninth, last . . . . .

P5,000

12. A building lot, numbered 113 and 117, abutting on the front on Calle Barcelona of the district of Tondo, bounded on the right by house number three of that street, belonging to Francisco Martinez and Francisco Sanchez; on the left by house numbered 7 of the same street, belonging to Julia Dina and on the back by house number 12, fronting on Calle Sevilla, the property of Juan Salazar. The said property measures twenty five meters and seventy-two centimeters in front, eighteen meters on the right, on the left side, the boundary of which is five straight lines, the first measuring eleven meters, the second three meters and forty-three centimeters, and the third three meters and forty centimeters, the fourth three meters and forty-five centimeters, and the fifth thirty-four meters and fifty-four centimeters; and on the back the boundary is an irregular line, the first part, measuring from the left being four meters and thirty-eight centimeters, the second eight meters and forty centimeters, the third, which forms an obtuse angle with the second being seventeen meters and sixty-five centimeters, the fourth being seven centimeters, forming an obtuse angle with the third indenting the land, and the fifth being nine meters and eighty-five centimeters, also forming an outward obtuse angle with the fourth line, making in all a superficial area of five hundred and sixty-six square meters and twenty-eight square centimeters.

The lot above described was acquired by Don Francisco Martinez by purchase from Alejo Vidal y Garcia for the sum of two thousand six hundred and forty-seven pesos and fifty-four cents, free of all *lincs* and encumbrances, as evidenced by a public instrument executed on the eighth of May, 1896, before the notary public Calixto Reyes y Cruz, the sale having been recorded at page 231, volume 9 of the district of Tondo, and 27 of the Archives, lot number 466, second inscription.

Upon the said lot, Francisco Martinez y Garcia has built a house which covers all the ground and has six front doors and a side door, it being at present numbered 135 to 149.

This building has not been registered in the registry of property.

By a public instrument executed on the twenty-third of March, last, before the notary public Vicente Azaola.

Francisco Martinez y Garcia, sold to the International Bank, represented by Robert Wemyss Brown a one-half interest in the said property for the sum of one thousand four hundred pesos, with the right to redeem the same on or before the thirtieth of June, 1903, this conditional sale having been recorded at page 231, volume 9, of the District of Binondo, and 27 of the Archives, lot number 466, third inscription.

By another instrument executed before the same notary, Vicente Azaola, on the fifteenth of June of the present year, the legal representative of the International Bank agreed to extend the time within which the property could be redeemed, under the conditions stipulated therein, Don Francisco Martinez in turn agreeing to sell the whole of the said property to the Bank as well as the other property which fell to him in the partition proceedings.

In pursuance of the said instrument and upon the completion and approval of these partition proceedings, Don Francisco Martinez hereby agrees to sell, with the right of redemption, to the International Bank,  
 133 the whole of the above described property for a sum and at a time to be stipulated, the other contracts heretofore entered into in pursuance of the instrument of June ninth, last, to continue in the meantime in full force and effect.

According to list number two, the monthly rental of the property in question is three hundred and fifty pesos, its assessed value being twenty-thousand pesos, which is the value given the same in these partition proceedings in accordance with the instrument of June ninth. . . . .

13. Another house of strong material and the lot upon which it stands on Calle Noria of the District of Quiapo, formerly numbered one and at present numbered 35, bounded on the front by the aforesaid Calle Noria, on the right by the lot which formerly belonged to Felix Salvidea, and at present the property of Ursuala Rosales; on the left by Calle San Roque, and on the back by an alley without a name. The lot upon which the house stands is twenty-one meters long by eight meters and seventy-centimeters deep, and has a superficial area of one hundred and eighty meters and seventy centimeters.

We do not have before us the original title of this property and therefore no mention is made of it.

By an instrument numbered twelve hundred executed in this City on the second of December, 1902, before the notary public, Don Genario Heredia, the said Francisco Martinez y Garcia sold, with the right to repurchase, for the term of one year and for the sum  
 134 of three thousand pesos, Mexican currency, a one-half interest in the property above described

to Carmen Z. Gonzaga y Pilar, the sale being recorded at page 110, volume 15 of the District of Quiapo and 37 of the Archives, northern district, lot number 830, third inscription.

By another instrument numbered 1151, executed on the ninth of November, 1902, before the same notary, Genario Heredia, the said Francisco Martinez acknowledged that he was indebted to Carmen Z. Gonzaga in the sum of two thousand five hundred dollars, Mexican currency, payable on the nineteenth of May, 1903, wherefore the parties agreed as appears from an instrument dated the 26th of May, 1903, before the notary public Fernando de la Cantera, that the two thousand five hundred pesos therein mentioned should be added as the purchase price of the property, with the right to repurchase until the partition of the property of the estate of Martinez é Ilustre should be completed, with the understanding that if the whole property was not assigned to Martinez, he, Martinez, would sell or transfer another property within two months for the above mentioned price of two thousand five hundred pesos.

This property remained in the possession of the vendor as lessee for the monthly rental of fifty five pesos, he to defray all expenses incurred for the property.

The property in question being included in list number one, which is all of the property which fell to Don Pedro Martinez in the partition, his father, Francisco Martinez, shall be liable for the total purchase price from

135 such sum as shall come to him from the liquidation of the administration or with his own funds, being in any case responsible for any damages which may result to Don Pedro should he permit the purchaser to become the actual owner of the property on account of his failure to redeem the same in proper time.

In the aforesaid list number one, it is stated that the above described property has a rental value of eighty pesos per month, it being assessed by the Government in the sum of six thousand, six hundred pesos, this being the value given to it in these proceedings.

14. Another house of strong materials, of two floors, and erected upon a lot belonging to the owner of the house and numbered 79 to 83, fronting on Calle Barcelona of the District of Binondo and within the demarcation of the northern district of the registry of property. It is bounded on the north, that is on the right by house and lot numbered 25, belonging to Genaro Tecson y Flora; on the south, that is on the left, by lot numbered 21, duplicate belonging to Candelaria Alonzo; and on

P6,600

the west, that is on the back, with several small houses without numbers belonging to Doña Gregoria Mendoza, the widow of Leocadio Victorino. This lot is a polygon in shape with six irregular sides, the frontage being four-teen meters and thirty-five centimeters, measuring twenty-two meters and thirty centimeters on the right; seventeen meters and eighty centimeters on the left, the back boundary being an irregular line, the first part measuring five meters and ten centimeters, the second part four meters and eight centimeters, and the third, nine meters and ten centimeters, the superficial area being two hundred and ninety-five square meters and 136 nine centimeters, the property being registered in the registry of property of the northern district at page 239, volume 5 of the archives, book seven of the municipality, District of Binondo, under number 352.

The property above described was acquired by Don Francisco Martinez by purchase from Telesforo Salvador y Tecson for the sum of five thousand eight hundred pesos according to a public instrument executed on the third of July, 1894, before the notary public Calixto Reyes y Cruz.

Don Francisco Martinez himself, by a public instrument executed on the thirteenth of February, 1903, before the notary public, Vicente Azaola, sold the above described property to the International Bank, represented by Roberty Wemyss Brown for the sum of five thousand eight hundred pesos, with the right to redeem the same on or before the thirtieth of June, following.

In an additional instrument executed by the parties on the sixth of March, last, it was agreed that the sale should be understood to be for only one-half of the property for the reason that the other one-half belonged to the conjugal partnership of Martinez é Ilustre.

This sale was accordingly recorded at page two forty-one, volume 7 of the district of Binondo, and 20 of the Archives, lot number 352, third inscription, on the thirteenth of March of the present year.

By another instrument executed on the fifteenth of June, last, before the notary public,

Don Vicente Azaola, the legal representative of the International Bank, agreed to extend the time for the redemption of the property under the conditions therein stipulated, Don Francisco Martinez in turn agreeing to sell to the said Bank the whole of the property hereinbefore described as well as other property which had fallen to him in the distribution.

In pursuance of the said agreement, and upon the completion and approval of these partition proceedings, Don Francisco Martinez, shall sell to the Bank, reserving to himself the right of repurchase, the above described

property for a price and within a time to be agreed upon by them, the contracts heretofore entered into between the parties under the instrument of June ninth remaining in the meantime in full force and effect.

According to list number two, the rental value of the property in question is one hundred and forty-five pesos per month, its assessed value being twelve thousand pesos, which is the price given it in these proceedings.....

P12,000

15. Another house of strong materials, the roof being partly of galvanized iron and partly of tile, and the lot upon which it stands, formerly numbered 57 and at present numbered nine, on Calle San Pedro, District of Quiapo, of this City, within the demarcation of the southern district of the registry of property. It is bounded on the right and on the left with certain houses and lots belonging to Roque Monroy and on the back by Palma street. The building covers all the ground, the lot being twelve yards long and sixteen and one-half yards deep, with a superficial area of two hundred and ten square yards, equivalent to one hundred and forty-six square meters and seventy-eight centimeters.

The above described property was acquired by Don Francisco Martinez in behalf of the conjugal partnership of Martinez é Ilustre from Ignacio Pineda, for the sum of three thousand five hundred pesos, according to a public instrument dated June 10, 1896, executed before the notary public Calixto Reyes y Cruz, said property having been registered in volume one, book ten, page fifty-two District of Quiapo.

By a public instrument executed on the fifteenth of December, 1902, before the notary Don Genaro Heredia, said Francisco Martinez y Garcia sold a one-half interest in the property above described to Juan Jose Pinedo y Rodriguez for the sum of three thousand pesos, with the right to redeem the same on the same day of the following year. This transaction was recorded on the fifteenth of December, 1902, at page fourteen, book four District of Quiapo.

The property in question having fallen to Pedro Martinez in the partition proceedings, the same being included in list number one, and his father, Don Francisco, having agreed according to the instrument of June ninth above-mentioned to release all the property heretofore numbered and included in the aforesaid list, the said Don Francisco Martinez, upon the completion and approval of these proceedings, shall repurchase with his own money the above-mentioned property and defray all expenses as well as all damages or expense to which Don Pedro may incur by reason

of the failure of Don Francisco to redeem the property within the time agreed upon.

According to the said list the property in question has a rental value of sixty pesos per month, it having been assessed at nine thousand seven hundred pesos, which is the value given it in these proceedings.....

P9,700

16. Another house of strong materials, with two front doors, and tile roof, and the lot upon which it stands on Calle Dulumbayan of the District of Santa Cruz, within the northern demarcation of the registry of property, formerly numbered twenty-seven and at present numbered seven. The building occupies the whole lot, which is eight yards long by thirty-three deep, that is to say, it has a superficial area of two hundred and sixty-four square yards, which is equivalent to one hundred and eighty-four square meters and forty-six centimeters. It is bounded on the front by Calle Dulumbayan, on the right by house number nine belonging to Agustina Medell y Marquez; on the left by house number five, belonging to the heirs of Romanda Rosaria, and on the back by house number one, the latter facing Plaza Santa Cruz, the property of Tomas Quiroz. This property is registered in the registry of property in volume one, provisional book number four, pages 87 and 88, first inscription.

140 This property was acquired by Francisco Martinez by purchase from Agustina Medel for the sum of four thousand, two hundred pesos, according to a public instrument executed before the notary public, Engracio Monroy on the seventeenth of April, 1895. This sale was recorded in the registry of property on the first of May of the same year in volume 1, provisional book four, pages 87 and 88, second inscription.

On the twenty-sixth of December, 1902, before a notary public, Don Francisco Martinez executed a public instrument whereby he sold and transferred the one half interest in the aforesaid property to Fernando Montero y Lopez, with the right of redemption, to run for one year from the date of the execution of the said instrument, for the sum of three thousand pesos. This instrument, which was a deed of sale with the right to repurchase, was recorded on the fifteenth of January, 1903, in volume 37 of the Archives, book 15, page 233 District of Quiapo.

This property being included in list number one, which contains all the property which fell to Pedro Martinez in the distribution in question, his father, Don Francisco, shall pay the whole of the repurchase price from his share in the settlement of the accounts of the administration, or from his own personal funds, he being in any event responsible for all damages which

Don Pedro may incur by reason of his, Don Francisco's failure, to redeem or repurchase the property within the time agreed upon.

141 The property in question has a rental value of one hundred and sixty pesos per month, it being assessed by the Government at thirteen thousand four hundred pesos, which is the value given it in these proceedings . . . . .

P13,000

17. Another house on Calle Elcano, District of San Nicolas, block number 36, numbered 151, bounded on the front by Calle Elcano, on the right by the lot belonging to Sabina Pantango, on the left by a lot belonging to Macaria Velasquez and on the back by the lot belonging to Carlos Wein. This property measures twelve meters and thirty centimeters in front, nineteen meters and fourteen centimeters on the right, twenty-meters and ten centimeters on the left, the back boundary consisting of three straight lines, the first measuring four meters and fifteen centimeters, the second seven meters and eighty six centimeters, and the third, joining the other two, fifty centimeters.

The aforesaid data has been taken from a map made on the seventeenth of March, 1902, by the surveyor, Arcadio Arellano, this map being the only document which we have before us.

According to verbal information from the registrar of property, the one here in question is not recorded and it is not known whether any lien exists upon it, Don Francisco Martinez stating that the same is absolutely free from any incumbrance whatsoever.

142 According to list number one, the monthly rental of the property is ninety pesos, its value having been included as previously stated in that of the house on Calle Cabelleros number 155 and 156.

18. Another house and lot between Cabelleros and Asunción Streets in the District of San Nicolas, block 37, and numbered 15 and 38, bounded in front by the said Asunción street, on the right by a lot belonging to Catalino Arevalo and Luisa Lichango, on the left by certain houses belonging to Benita Gotengo and Ciriaco Echaluze, and in back by Calle Caballeros. This property measures ten meters and forty-eight centimeters in front, the right boundary consisting of two lines, the first measuring sixteen meters and four centimeters, and the second twenty-five meters and ninety-five centimeters, and a third line joining these two measuring fifty-seven centimeters; the left boundary is also formed of two lines, the first of which measures twenty-one meters and sixty-seven centimeters and the second eighty meters and twenty-five centimeters, there being a third line joining both one meter and eleven centimeters in length; and

the back boundary line measures nine meters and eighty-seven centimeters.

The above information is taken from a map prepared on the 11th of March, 1902, by the surveyor Arcadio Arellano, this map being the only document which we have before us.

According to verbal information from the registrar of property, this property is not inscribed and for this reason it is impossible to ascertain whether the same is  
143 encumbered Don Francisco Martinez, however, states that this property is absolutely free from incumbrances.

According to list number one, the rental value of this property is one hundred and thirty pesos, its value having been included as said before in that of the house on Calle Cabelleros numbers 100, 155 and 156.

Another house and the lot upon which it stands on Calle Lavezares, District of San Nicolas, numbered 68 to 76, adjoining other houses on Calles Barcelona and Sevilla, also owned by Francisco Martinez. All of these houses being included in the same map, it is difficult to ascertain the actual boundaries of the property in question. The only information which we have at hand relating to this matter is the map made by the surveyor, Arcadio Arellano, on the 27th of January, 1903.

This property, according to information furnished by the registrar of property is not inscribed and it is therefore unknown whether or not any lien exists upon the same. Don Francisco Martinez, however, states that this property is absolutely free from any incumbrance whatsoever.

By a public instrument executed on the fifteenth of June last, before the notary public, Vicente Azaola, Francisco Martinez y Garcia agreed to sell and transfer this property with the right of redemption to the International Bank for a price and within a time to be later stipulated in consideration of the obligation assumed by the latter to release the property which fell to Don Pedro Martinez from all liens and encumbrances.

According to list number two, this property has a monthly rental value of one hundred and seventy  
144 pesos, it having been assessed by the authorities in the sum of sixteen thousand pesos, which is the value given it in these proceedings.

Another house and the lot upon which it stands, between Calles Sevilla and San Nicolas, District of San Nicolas, and numbered eighty, eighty-two, eighty-six and eighty-eight. Bounded on the front by the said Calle Sevilla, on the right by certain property belonging to Enrique Rodriguez, on the left by Calle San Nicolas

P16,000



and on the back by certain property belonging to Ponciana Pascual. The said property measures eleven meters and nineteen centimeters in front, eleven meters and two centimeters on the right, the left boundary being an oblique line extending from Calle Sevilla to Calle San Nicolas, four meters and fifty centimeters in length, and the line on said Calle San Nicolas being seven meters and seventy centimeters; the back boundary line being fourteen meters and thirteen centimeters.

The foregoing data is taken from the map made by the surveyor Arcadio Arellano on the thirteenth of June, 1902, said map being the only document which we have before us.

According to verbal information from the registrar of property, this house and lot is not inscribed, and it is impossible to ascertain whether or not it is incumbered. Francisco Martinez, however, states that the same is free from all liens and encumbrances.

By a public instrument executed June 15th, before Vicente Azaola, a notary public, Francisco Martinez y Garcia agreed to sell this property, with the right of repurchase, to the International Bank for a price and within a time to be determined, the said Bank agreeing to relieve from all lien and encumbrance the property that fell to Pedro Martinez in the distribution, which had been purchased by it with the right of redemption on the part of the vendor.

According to list number two, this house has a monthly rental value of one hundred and forty-seven pesos, it having been assessed in the sum of six thousand pesos, which is the value given it in these proceedings.

P6,000

Two houses and the lot upon which they stand on Calle Lara, District of San Nicolas, numbered 97 and 99 respectively. This lot is bounded on the front by Calle Lara, on the right by certain property belonging to Isabelo de los Reyes; on the left by other property owned by Julia Marcelo, the document which we have before us not showing who owns the property adjoining it on the back. This lot measures thirty-one meters and fifty-seven centimeters in front; twenty-two meters and eighty-three centimeters on the right; on the left the boundary being three straight lines, the first measuring ten meters and six centimeters, the second twelve meters and four centimeters, and the third one meter and fourteen centimeters; and on the back measuring nineteen meters and seventy centimeters.

All of this data has been taken from a map, this being the only document which we have before us, made by Arcadio Arellano on the twelfth of July, 1902.

According to information furnished by the Registrar of Property, this lot is not inscribed

and it is therefore impossible to ascertain whether or not any lien exists upon it. Francisco Martinez, however, states that the same is free from all liens and encumbrances.

By a public instrument executed on the fifteenth of June last before the notary public Vicente G. Azaola, Francisco Martinez y Garcia, agreed to sell and transfer this property with the right of redemption to the International Bank for a price and within a time to be stipulated, in consideration of the obligation assumed by the latter to release from all liens and encumbrances the property which fell to Pedro Martinez in the distribution aforesaid and which the Bank had purchased with the right of redemption on the part of the vendor.

According to list number two, these two houses have a monthly rental value of one hundred and thirty-five pesos, they having been assessed by the authorities in the sum of twelve thousand pesos, which is the value given to them in these proceedings.....

P12,000

22. Another house and the land upon which it stands on Calles Barcelona and Peñarubia, District of San Nicolas, numbered 157 to 173 and 45 to 47. It is bounded on the front by Calle Barcelona; on the left by Calle Peñarubia, the document from which this information is taken not showing who are the owners of the adjoining property on the right and back. The building measures: on the front, which is formed by an oblique line on Calle  
147 Peñarubia, eleven meters and fifty-seven centimeters in length, and other oblique line on Calle Barcelona, twenty-five meters and seven centimeters; on the right fourteen meters and seventeen centimeters; on the left ten meters and fifty-six centimeters; and on the back the boundary is formed by two lines, one measuring ten meters and sixty-five centimeters and the other nineteen meters, with a connecting line of three meters and ten centimeters in length.

The aforesaid data is taken from a map prepared by Arcadio Arellano, surveyor, on the 22nd of January, 1902, this map being the only data which we have before us.

From information furnished by the Registrar of Property, we learn that this house and lot are not inscribed and it is therefore unknown whether the same is mortgaged or not. Francisco Martinez, however, states that it is free from all encumbrances. (List number two.)

By a public instrument executed on the fifteenth of June, last, before the notary public Vicente G. Azaola, the said Francisco Martinez y Garcia agreed to sell this property with the right of repurchase to the International Bank for a price and within a time to be agreed

upon in consideration of the agreement on the part of the latter to release and relieve from all lien and incumbrances the property which fell to Don Pedro Martinez in the distribution and which the Bank bought subject to the right to repurchase on the part of the vendor.

148 According to list number two, the property hereinbefore described has a monthly rental value of three hundred and forty pesos, it having been assessed by the authorities in the sum of eighteen thousand pesos, which is the value given it in these proceedings. . . . .

P18,000

23. Another house of strong materials and the lot upon which it stands on Calle Sevilla, District of San Nicolas, numbered 94, 96 and 98, adjoining other houses owned by the said Francisco Martinez on Calles Barcelona and Lavezaras. This property measures seventeen meters and thirty-seven centimeters in front; thirteen meters on the right; thirteen meters and thirty-four centimeters on the left, and ten meters and two centimeters on the back. It is bounded on the front by the said Calle Sevilla; on the right by the house and lot belonging to Romana de Guzman; on the left with property belonging to Camila Fajardox and Teodoro Patricio; and on the back by certain property belonging to the said Francisco Martinez.

The above data is taken from a map prepared by Arcadio Arellano, surveyor, on the 27th of January, 1902, which said map is the only document which we have before us.

According to information furnished by the Registrar of Deeds the property in question is not inscribed, and it is therefore impossible to ascertain whether or not any lien exists upon it. Francisco Martinez, however, states that the same is absolutely free from all incumbrances whatsoever. (List Number one.)

149 This property was appraised together with the property situated on Calle Elcano, Asuncion and Caballeros in the sum of twenty thousand pesos, the monthly rental value being one hundred and eleven pesos.

24. Another house of strong materials with two front doors, and the lot upon which it stands, numbered one hundred and thirteen and one hundred and seventeen Calle Barcelona, of the District of San Nicolas. This property measures seven meters and eighty-six centimeters in front; seven meters and two centimeters on the right and eight meters and forty-six centimeters on the left; the back boundary being twenty meters and eleven centimeters. It abuts on Calle Barcelona and the only document which we have before us, to-wit, a map prepared by Arcadio Arellano, surveyor, on the

twenty-seventh of January, 1902, furnishes no other information.

According to the Registrar of Property, the property in question has not been inscribed and it is therefore impossible for us to ascertain whether or not any lien exists thereon. Don Francisco Martinez, however, states that the same is entirely free of any encumbrance whatsoever.

According to list number one this property has a monthly rental value of sixty-eight pesos, it having been assessed for the purpose of taxation in the sum of seven thousand seven hundred pesos, which is the value given to it in these proceedings. . . . .

P7,700

25. Another house and the lot upon which it stands, of strong materials, with three front doors situated between Calles Peñarrubia and Barcelona, District of San Nicolas, and numbered 151, 155, and 46. This property measures ten meters and forty-seven centimeters in front; eleven meters and ninety centimeters on the right; the boundary on the left side consisting of an oblique line extending from Calle Barcelona to Calle Peñarubia, which line is four meters and sixty-seven centimeters in length and on Calle Barcelona eight meters and nineteen centimeters; and on the back the property measures thirteen meters and fifty-six centimeters. No further information can be obtained from the only document which we have at hand, i. e., a map prepared by Arcadio Arellano, surveyor, on the twenty-second of January, 1902.

According to information furnished by the Registrar of Property, we learn that this house and lot have never been registered and it is therefore impossible to ascertain whether or not any lien exists thereon, although Francisco Martinez states that the same is absolutely free from any incumbrance whatsoever.

By a public instrument executed on the fifteenth of June, last, before the notary public Vicente G. Azaola, Francisco Martinez y Garcia agreed to sell and to transfer, with the right of repurchase, to the International Bank, the property in question for a price and within a time to be stipulated in consideration of the obligation which the Bank assumed of relieving and releasing of all lien and incumbrance the property which fell to Pedro

151 Martinez in the distribution and which the Bank had previously purchased from Martinez, the latter reserving the right to redeem the same. According to list number number two, the above described property has a monthly rental value of one hundred and seven pesos; it being assessed for the purpose of taxation in the sum of six thousand pesos, which is the value given it in these proceedings . . . . .

P6,000

26. Another house with five front doors and the land upon which it stands, numbered 14 and 22 Calle Peñarubia. We have not before us any antecedents or papers relating to this property and it is therefore impossible to describe it.

It is included in list number two. By a public instrument executed on the fifteenth of June last before the Notary Public, Vicente G. Azaola, the said Francisco Martinez y Garcia, agreed to sell this property with the right of redemption to the International Bank for the price and within a time to be stipulated, in consideration of the obligation assumed by the Bank of releasing and relieving any lien upon the property which fell to Pedro Martinez in the distribution, the said Bank having purchased this property theretofore, subject to the right of redemption by the vendor.

The monthly rental value of this property is one hundred and eighty pesos, it being assessed for the purpose of taxation in the sum of fifteen thousand pesos, which is the value given to it in these proceedings.....

P16,000

152 27. Another house and lot on Calle Sevilla numbered 93, 95 and 97.

We have not before us any antecedents or papers relating to this property and it is therefore impossible to describe the same.

This property is included in list number two. By a public instrument dated June 15th, and executed before the notary public Vicente G. Azaola, the said Francisco Martinez y Garcia agreed to sell the said property, subject to his right to repurchase, to the International Bank for the price and within the time stipulated in consideration of the obligation assumed by the Bank to release from all liens and encumbrances the property which fell to Don Pedro in the distribution and which the Bank had previously purchased subject to the right of redemption on the part of the vendor.

This property has a monthly rental value of one hundred and two pesos, it having been assessed for the purpose of taxation in the sum of four thousand, five hundred pesos, which is the value given it in these proceedings .....

P4,500

28. Another house with seven front doors and the lot upon which it stands on Calle Sevilla, numbered 100, interior.

We have not before us any antecedents or documents relating to this property and it is therefore impossible to give any description of the same.

This property is included in list number two.

By a public instrument executed on the fifteenth of June, last, before the notary public Vicente G. Azaola, the said Francisco Martinez y Garcia agreed to sell this property with the right of re-

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purchase to the International Bank for the price and within the time stipulated in consideration of the obligation assumed by the latter to release of all lien and encumbrance the property which fell to Don Pedro Martinez and which the Bank had previously purchased, subject to the vendor's right to redeem the same.

This property has a monthly rental value of seventy-six pesos, it having been assessed for the purpose of taxation in the sum of three thousand five hundred pesos, which value given it in these proceedings.....

P3,500

29. The steamer "Don Francisco," with high and low pressure engines of twenty-five horsepower, brigantine rigged, with copper sheathed wooden hull.

This steamer was purchased in Hong Kong in the year 1893 by order of Messrs. George Armstrong for the sum of nineteen thousand pesos, it having been subsequently sold to Francisco Martinez for the same amount, nineteen thousand pesos, as shown by the instrument executed before the Spanish Counsel at the said Port of Hong Kong, deed of acceptance number 263 executed before the notary public Calixto Reyes y Cruz on the 20th of June, 1893.

The measurements of the said steamer are as follows: Length, thirty-one meters and fourteen centimeters; beam, five meters and fifty centimeters; depth, two meters and nineteen centimeters, with a gross tonnage of one hundred and five and twenty-six one hundredths tons, according to a certificate issued on the 29th of May, 1893, by the Admeasurer, Luis Ruiz Moreno. This steamer was appraised in May, 1893, in the sum of fifteen thousand pesos and it was registered April 2nd, 1898.

By a public instrument executed on the second of May, last, before the notary public, Eduardo G. Repidé, the said Francisco Martinez y Garcia, borrowed from the International Bank the sum of thirty-thousand pesos, Mexican currency, at eight per cent interest per annum, and to secure this indebtedness he pledged to the Bank a one-half interest in the said steamer, and another half interest in the steamer hereinafter described, obligating himself to pay principal and interest on the second of August of the present year, and any expenses which might be incurred by reason of his noncompliance with this obligation.

By another instrument dated June 15th, executed before the notary public Vicente G. Azaola, the International Bank, represented by Robert W. Brown, agreed to release the aforesaid steamer from the pledge referred to in the above described instrument, and to deliver the said steamer to Pedro Martinez free from all encumbrances on condition that Francisco Martinez should

pledge the whole of the steamer hereinafter described to secure the loan in question.

The steamer above referred to and the pilot boat "Marmouques" of which we have no antecedents whatever, were included in list number one, both having been appraised in the sum of thirty thousand pesos, which is the value given them in these proceedings. . . .

P30,000

30. The single screw steamer "Germana," with high and low pressure engines of thirty-two horsepower, schooner rigged,

155 This steamer was built in the Port of Hong Kong in 1897 for William George Winnleburn, who sold it to Francisco Martinez y Garcia for fifty-six thousand pesos, as appears from an instrument executed on May fifth, 1897, before the notary public of this City, Agustin Malfas.

It was measured by Manuel de la Vega, a marine lieutenant May tenth, 1897, its dimensions being the following:

Length, thirty-two meters and sixty-nine centimeters; beam, five meters and forty-five centimeters; and depth, two meters and twenty-nine centimeters, with a gross tonnage of 136.39 tons, and a net tonnage of 88.68 tons, it having been appraised in the sum of twenty-six thousand pesos on May 7th, 1897, and was provisionally registered April 15th, 1898.

By a public instrument executed May second, 1903, before the notary public Eduardo Gutierrez Repidé, the said Francisco Martinez y Garcia borrowed from the agent of the International Bank the sum of thirty thousand pesos Mexican currency at eight per cent interest, payable on the second of August of the same year and to secure this indebtedness he pledged to the said bank a one-half interest in the above-described steamer, together with the one previously described, and to answer for any damages which might be incurred.

By another instrument executed June 15th, before the notary public, Vicente G. Azaola, the said Francisco Martinez agreed to pledge to the International Bank the other one-half of the steamer above described, in  
156 consideration of the obligation assumed by the Bank to entirely release the steamer "Don Francisco," formerly pledged to secure the same obligation.

The steamer "Germana" is included in list number two, and has been appraised by mutual agreement in the sum of thirty-five thousand pesos, which is the value given it in these proceedings. . . .

P35,000

Total . . . . . P386,236

In accordance with the law, and in accordance with the foregoing statement we make the following



*General Recapitulation of the Property.*

The urban property in accordance with the foregoing statement is of the value of Three hundred and twenty-one thousand, two hundred and thirty-six pesos. . . . . P321,

The steamers "Don Francisco" and "Germana" and the pilot boat "Mormoques," sixty-five thousand pesos. . . . . P65,

Total . . . . . P386,

The total value of all of the property is therefore, three hundred and eighty-six thousand two hundred and thirty-six pesos.

*General Reductions.*

There are no deductions of a general character to be made from the total sum shown by the inventory, and as to the sales made by Francisco Martinez to the International Bank, subject to his right to repurchase, after describing each individual piece of property, mention has been made of the contracts which the parties have obligated themselves to make.

157 As to other obligations, they are mentioned in the contracts and we refer to them.

Therefore the total value of the property of the conjugal partnership being three hundred and eighty-six thousand two hundred and thirty-six pesos, each of the parties interested therein is entitled to one-half thereof, to-wit, one hundred and ninety-three thousand, and one hundred and eighteen pesos, but as in the instrument of June ninth the parties agreed that Don Francisco Martinez would be only entitled to one hundred and ninety three thousand pesos, whereas his son Don Pedro would be entitled to one hundred and ninety-three thousand, two hundred and thirty-six pesos, the former having waived his claim in favor of the latter a half of the difference of two hundred and thirty-six pesos, we shall govern ourselves by the aforesaid amounts in determining the share of each in the following manner.

*Share of Francisco Martinez y Garcia.*

One-half of the property of the conjugal partnership from which there should be deducted the one hundred and eighteen pesos, given to his son Pedro. . . . . P193,

A right of usufruct for life of the sum of sixty-four thousand, four hundred and forty-two pesos. . . . . P64,

Therefore his share is One hundred and ninety-three thousand pesos in full dominion and the right of usufruct of the sixty-four thousand four hundred and  
158 forty-two pesos . . . . . P193,



*Share of Pedro Martinez E. Ilustre.*

One-half of the property of the conjugal partnership, as shown in the inventory, plus the one hundred and eighteen pesos given to him by his father, Don Francisco, making a total of One hundred and twenty-eight thousand seven hundred and ninety-four pesos.....	P128,794
Subject to the usufructuary right of his father.....	P64,442
His share, therefore, is One hundred and ninety-three thousand, two hundred and thirty-six pesos.....	P193,236

*Résumé of the Above Statement.*

Francisco Martinez'- share.....	P193,000
In usufruct .....	P64,442
Don Pedro Martinez'- share .....	P128,794
Subject to his father's right of usufruct.....	64,442
	<hr/>
	P386,236

The value of the property included in the inventory is therefore .....

P386,236

In accordance with the result of the foregoing statement we proceed to make the following

*Adjudication and Payment.*

As has been said, the share of Don Francisco Martinez is One hundred and ninety-three thousand pesos.....

P193,000

he being entitled to the usufruct of the sixty-four thousand four hundred and forty-two pesos.

In payment of his legal portion, he is given the houses set forth in the inventory under numbers, 7-8-10-15-11-12-14-19-20-21-22-25-26-27 and 28, the total value of which is one hundred and fifty-eight thousand pesos .....

P158,000

The steamer enumerated as number 30 is also assigned to him, its value being thirty-five thousand pesos .....

35,000

There are also assigned to him in usufruct for life the property designated as number- 4, 6 and 9, the value of which is sixty-four thousand five hundred pesos, which is eighteen pesos in excess of what he is actually entitled —, it being impossible to apportion this amount exactly, this difference off-setting in part the amount which Don Francisco gave to his son under paragraph eight.....

64,500

Upon the release of these three pieces of property, the first two under the agreement made with the International Bank on the fifteenth of June, last, and the latter being still pledged to the said Bank, they shall be liable for the fulfillment of the resulting obligation, they having been assigned in payment of the usufruct to which the surviving spouse is entitled by law, and Don Pedro

Martinez hereby obligates himself not to sell or otherwise dispose of the same without the consent of the usufructuary, and a record to this effect will be made in the registry of property when the inscription is entered and the right of usufruct in favor of Francisco Martinez is therein recorded.

160 The value of the property thus assigned to Francisco Martinez is one hundred and ninety-three thousand pesos . . . . .

P193,000

And the usufruct of sixty-four thousand four hundred and forty-two pesos . . . . .

P64,442

These two items constitute the whole of his share in the estate in question.

#### *Adjudication and Payment.*

It has also been said before that the share of Pedro Martinez é Ilustre is one hundred and ninety-three thousand, two hundred and thirty-six pesos, of which he is fully entitled to the sum of One hundred and twenty-eight thousand, seven hundred and ninety-four. . . . .

P128,794

And subject to his father's usufruct. . . . .

64,442

making a total of . . . . .

P193,236

In payment of his legal portion he is hereby given the houses appearing in the inventory under numbers 1-2-3-5-13-15-16-17-18-23 and 24, the value of which is ninety-eight thousand, seven hundred and ninety-four pesos. . . . .

P98,794

He is also given the full ownership of the steamer numbered 29 appraised at thirty thousand pesos. . . . .

P30,000

He is further given the full ownership of the houses appearing in the inventory under numbers 4, 6 and 9, the value of which is sixty-four thousand, four hundred and forty-two pesos, subject, however, to his father's usufruct . . . . .

P64,442

161 The property thus assigned to Don Pedro Martinez in full dominion is of the value of One hundred and twenty-eight thousand, seven hundred and ninety-four pesos . . . . .

P128,794

And that subject to his father's usufruct has a value of sixty-four thousand, four hundred and forty-two pesos . . . . .

P64,442

This represents the whole of the share in the estate.

#### *Résumé of the Distribution.*

The value of the property assigned to Francisco Martinez is . . . . .

P193,000

" " " " " " Pedro Martinez is . . . . .

P193,236

Total . . . . .

P386,236

This total agrees with the total value of the property included in the inventory which shows that the foregoing statement is correct.

*General Statement.*

1. Such other property of the estate of Doña Germana Ilustre which is legally partnership property shall be divided between the interested parties in the same manner as aforesaid, and they shall be equally liable for any debt, obligation or lien that might exist upon it, unless such debt or obligation has been contracted by one of the parties only, in which case the party who contracted it shall be solely responsible therefor.

2. The parties interested in this partition are mutually bound to guaranty the titles to the property assigned to them in accordance with the provisions of section 1066 of the Civil Code.

3. Considering that no mention has been made in these partition proceedings of the proceeds of the management and administration of such of the property as is situated in this City and in the province of Batangas, since the death of Doña Germana Ilustre, any sum due upon the settlement of the accounts of administration after deducting all expenses and disbursements for the payment of any lien of general character existing upon the same, shall be distributed between the parties in interest in the same proportion as the property which is the subject of this partition.

4. There being no real title deeds to the property included in the inventory, either party, if he so desires, may procure the same in accordance with the law.

5. Upon the approval of these partition proceedings by the interested parties, Don Francisco Martinez, and his son, Don Pedro, and the Court of First Instance, these partition proceedings shall be embodied in a public instrument, after the parties receive the portions they are legally entitled to, and recorded in the Registry of Property.

And upon these terms and conditions, the parties hereto have made a true and correct liquidation and partition of the property of the estate of Doña Germana Ilustre, as directed in the instrument of the ninth of June, last, in conformity with the legal provisions applicable thereto, and the partition therein made by the parties.

Manila, September —, 1903.

(Signed)

VICENTE G. AZAOLA.

"

FRANCISCO MARTINEZ.

"

For THE INTERNATIONAL BANKING  
CORPORATION,  
R. W. BROWN, *Manager*.

Indorsed: "July 8th, '04. H. D. G. V. G. T. C. K."

## DEFENDANT'S EXHIBIT 57.

To the Registrar of Property of this City:

Robert W. Brown, a resident of this City, of legal age, married, the Agent and Representative in Manila of the International Banking Corporation, as appears from the power of attorney which he holds, and which was duly recorded on the sixth of June, last, in the Mercantile Registry of this City at page 366, second inscription, of the book of Partnerships, volume 10, begs to state:

That on the twenty-seventh of March last he presented to you for registration a certain deed executed by Don Francisco Martinez in favor of the undersigned, such deed being an obligation for eighty thousand dollars, Mexican currency, secured by a mortgage upon the property included in the accompanying list.

That deed referred to different recordable rights independent of the mortgage, upon which your Office has not as yet taken any action.

As to the latter you have simply denied the inscription on account of certain defects in the deed, all of which can be cured, but which required the notation of the suspension of such rights.

The others referred to, and which are included in the obligation itself, are limited to the following:

1. To the inscription of the limitation of the right of ownership which the owner imposed upon himself, not to do any act with reference to the said property except through the agency of the Bank, under paragraph two, section two of the mortgage law, in so far as it restricts that right.

2. To the inscription of the power of attorney given to the Bank, of an irrevocable nature, authorizing the latter to dispose of all the property referred to.

The undersigned, being entitled to have such inscription made, hereby requests that you proceed to make the same in the manner provided by law.

Manila, April 17th, 1903.

(Signed)

R. W. BROWN,

*Agent International Banking Corporation, Manila.*

Filed this twentieth day of April, 1903, at four P. M.

(Signed)

ALBERTO BARRETTO.

Indorsed on margin of first page:

"The inscription of the title referred to in the above is hereby denied for the reason that the defects in the same and which are enumerated at the foot of the same, particularly the first one, can not be cured.

165 "The notation of suspension asked for is also hereby denied.

Manila, April 22nd, 1903.

[SEAL.]

(Signed)

ALBERTO BARRETTO."

Indorsed: "July 8th, '04. H. D. G. V. G. T. C. K."

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## DEFENDANT'S EXHIBIT No. 58.

MANILA, P. I., *February 12, 1903.*

Mr. R. W. Brown, Present.

MY ESTEEMED FRIEND: Don Francisco Martinez will present for collection to-day three checks of one thousand pesos each, issued in my favor, for the purpose which you already know and which you will pay. There is no objection to doing so. Later if the doctor will permit it, I shall go to see you.

Very respectfully,

(Sgd)

REGIDOR.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

## DEFENDANT'S EXHIBIT No. 59.

Envelope addressed:

Sr. D. R. W. Brown.

Indorsed: RWB.

Indorsed: July 8-04. H. G. D. V. G. T. C. K.

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## DEFENDANT'S EXHIBIT 60.

Messrs. Armstrong &amp; Mackey:

Replying to your letter, I beg to state that the steamer "Germana" has been pledged to me by its owner, D. F. M., in a public instrument such and such a date, prior to his declaration of incapacity, and the depositary, Mr. Robles, who held the same for the Bank, having resigned his office, I have taken charge of the steamer so pledged, to secure the indebtedness of D. F. Martinez to the Bank.

The Court has not authorized the guardian, Mr. Cohn, to take possession of any property except that which is at present in the possession of D. F. Martinez (not those the possession of which Mr. Martinez has either temporarily or definitely lost, as is the case with the steamer "Germana," which under the law must be in the possession of the administrator, and it was so agreed in the aforesaid instrument, wherein it is said that the steamer shall be subject to order.

You can answer Mr. Cohn accordingly.

As to the payment referred to, this Bank has no objection to making.

Indorsed: "July 8, '04. H. D. G. V. G. T. C. K."

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## DEFENDANT'S EXHIBIT No. 62.

Mr. R. W. Brown.

MY DISTINGUISHED FRIEND: The following is the information that I have been able to obtain from the registry of property in regard to the property of Francisco Martinez.

The two deeds which you showed me refer to the same property. One of them was executed by the man who sold it to Martinez for the sum of \$5800 on the third day of July, 1894. It is free from any lien whatsoever. That gentleman, however, has now some litigation with his son over the estate of his mother for which Mr. Martinez is accountable.

If you desire to make this transaction, it would be well to take all necessary precautions, and if you entrust to me the drafting of the instrument, I am sure you will be satisfied. The references which I have in regard to Mr. Martinez's credit are satisfactory.

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## DEFENDANT'S EXHIBIT No. 63.

I have received from Don Francisco Martinez the sum of 1,000 pesos on account of his cases, to my entire satisfaction.

Manila, February 16, 1903.

RICARDO REGIDOR.

## DEFENDANT'S EXHIBIT No. 64.

Received of Don Francisco Martinez the sum of 1,000 pesos which I will pay to the said Señor on the 30th of June next.

Manila, February 2, 1903.

RICARDO REGIDOR.

## DEFENDANT'S EXHIBIT No. 65.

APRIL 30, 1903.

For Pesos 2,000 (\$2,000).

I will pay in Manila, three months after date, to the order of Don Francisco Martinez, the sum of 2,000 pesos, Mex. value received, from him, for commercial operations to my entire satisfaction.

Manila, January 31, 1903.

SEBASTIAN LOZANO.

I guarantee it.  
(S'g'd)

R. REGIDOR.

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## DEFENDANT'S EXHIBIT 66.

I, Gregorio Legaspi y Nieves, a resident of the City of Manila, province of Manila, Philippine Islands, do hereby state: That by a public instrument executed on the sixth day of December, 1902,

before the notary public of this City, Calixto Reyes y Cruz, by Francisco Martinez y Garcia, the latter sold to me a one-half interest in a certain piece of urban property with the provision that if within six months of the execution of said instrument, this period being extendible for a period of one year he should pay to me the purchase price of the said property I would resell the same to him, and in consideration of the fact that he has paid to me the sum of seven thousand pesos, the purchase price, I do hereby make known by these presents that I resell and transfer to him, the said Francisco Martinez y Garcia, his heirs and assignees, a one-half interest in a certain house of strong materials, with galvanized iron roof, it consisting of eight apartments, with twelve front doors, and a warehouse adjoining the same, also of strong materials, it having a tile roof, used for the storage of goods and the land upon which said buildings stand, numbered 9 Calle Aceiteros of the District of Tondo of this City, and within the demarcation of the Northern District of the Register of Property, bounded on the right by a public street, without name, which is a prolongation of Calle Tabora; on the left by the house and lot of Florencio Basa; and on the back by the lot abutting on Calle Sta. Lena, belonging to Balbino Ventura. The above described property is thirty-three yards long by twenty one deep, making a superficial area of five hundred and seventy-eight meters and forty centimeters, the whole ground being covered by the said buildings. I further declare that I have hereby agreed with the said Francisco Martinez y Garcia that he is the absolute owner of the property, which is entirely free from all liens and encumbrances and that he may transfer the same to any other person, and that I guaranty to Francisco Martinez y Garcia, his heirs and assignees, the title to the said property, which I hereby promise to defend now and at any time against all just claims by whomsoever brought for the period during which the property was in my possession. In witness whereof, I sign these presents this twenty-first day of February, 1903.

(Signed)

MARTIN SANDOVAL.

Signed in the presence of:

(Signed) GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

I, the Municipality of Manila, province of Manila, this — day of February, 1903, there appeared before me Gregorio Legaspi, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free will and

(Signed)

VICENTE G. AZAOLA,  
*Notary Public.*

[NOTARY'S SEAL.]

My Commission expires January 1st, 1905.

I, Gregorio Legaspi Nieves, a resident of the City of Manila, province of Manila, Philippine Islands, do hereby declare: That by a public instrument executed on the sixth day of December, 1902, before the notary public of this City, Calixto Reyes y Cruz, by Francisco Martinez y Garcia, the latter sold to me a one-half interest in a certain piece of urban property, with the provision that if, within six months after the execution of said instrument, this period being extendible for an additional year, he should repay to me the purchase price of the said property, I would resell the same to him, and in consideration of the fact that Mr. Martinez has paid to me the sum of two thousand pesos, the purchase price, I do hereby make known and by these presents do sell and transfer to him, the said Francisco Martinez Garcia, his heirs and assignees, a one-half interest in a certain house, having a galvanized iron roof, composed of two apartments on the ground floor and two rooms on the upper floor, and the lot upon which it stands on Calle Espleta, District of Santa Cruz of this City, and within the demarcation of the northern district of the registry of property, numbered 4, 6, 8 and 10 and then numbered 6. It is bounded on the right by lot number four, belonging to Sabas del Rosario; on the left by lot number eight belonging to Isabel Corleta, and on the back by lot number 173 seven, abutting on an alley without a name belonging to Silvino Mapua. The lot, which is entirely occupied by the building, has a superficial area of three hundred and twenty-square meters and forty-five square centimeters.

I further declare and do hereby agree with the said Francisco Martinez y Garcia that he is the absolute owner of the property in question, which is entirely free from all liens and encumbrances, and that he may transfer the same to any other person, and that I guarantee to Francisco Martinez y Garcia, his heirs and assignees, the title to the said property, which I hereby promise to defend now and at all times against all just claims by whomsoever brought for the period during which it was in my possession.

In witness whereof I sign these presents this twenty-first day of February, 1903.

(Signed)

MARTIN SANDOVAL.

Signed in the presence of:

(Signed) GREGORIO RAMOS.

UNITED STATES OF AMERICA.

*Philippine Islands, City of Manila:*

In the Municipality of Manila, province of Manila this — day of February, 1903, personally appeared before me Gregorio Legaspi Nieves, known to me to be the person who executed the foregoing instrument and who acknowledged the same to be his free will and deed.

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1st, 1905.



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## DEFENDANT'S EXHIBIT No. 68.

I, Francisco Martinez y Garcia, resident of Manila, province of Manila, Philippine Islands, in consideration of the sum of seven thousand pesos to me paid by the International Banking Corporation through its agent R. W. Brown of this City, do hereby sell and transfer to the said R. W. Brown as the agent of the said Bank and to whomsoever should hereafter represent the said Banking Corporation, the following described piece of land, together with the buildings and improvements thereon in the municipality of this City, province of Manila, Philippine Islands, to wit:

A one-half interest in a house of strong materials, with galvanized iron roof, having eight apartments with twelve front doors and the warehouse adjoining the same, also of strong materials, with a tile roof, used for the storage of goods, and the lot upon which both buildings stand and numbered 9, fronting on Calle Aceiteros, District of Tondo, this City, and within the demarcation of the northern district of the register of property. The said property is bounded on the right by a public street without a name; an extension of Calle Tabora; on the left by the house and lot of Florencio Basa; and on the back by the lot, unnumbered, fronting on Calle Santa Lena, belonging to Balbino Ventura.

This property is thirty-three yards long by twenty-one yards deep and has a superficial area of five hundred and seventy-eight square meters and forty centimeters, more or less, the whole lot being occupied by the building.

175 I further declare that I have agreed with the said agent of the International Banking Corporation, as such, that if, on the thirtieth of June of the present year, at 12 o'clock P. M., or before that date, I return to him the aforesaid seven thousand pesos, local currency, in silver, in this City, and pay to him all the expenses which may have been incurred by virtue of this contract, the said R. W. Brown, as agent of the said Banking Corporation, shall be bound to resell to me the aforesaid property; but, if on the contrary, I fail to make such payment within the time agreed, the International Banking Corporation shall become there and then the absolute owners of the property, free of all liens and incumbrances, the Bank being at liberty to sell the same to any person.

I further declare that I have agreed with the said R. W. Brown, as such agent, or with whosoever may hereafter represent the Bank, to at all times defend and protect the title to the said property from any just claims, by whomsoever brought.

In witness whereof, I sign these presents this thirteenth day of February, 1903.

(Signed)

MARTIN SANDOVAL.

Signed in the presence of:

(Signed) GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

176 In the municipality of Manila, province of Manila, this day of February, 1903, personally appeared before the undersigned notary public, Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his free act and deed.

(Signed)  
 [NOTARIAL SEAL.]

VICENTE G. AZAOLA,  
*Notary Public.*

My Commission expires January 1st, 1905.

DEFENDANT'S EXHIBIT No. 69.

I, Francisco Martinez y Garcia, a resident of Manila, province of Manila, Philippine Islands, in consideration of the sum of two thousand pesos, paid to me by the International Banking Corporation through its agent R. W. Brown of this City, do hereby sell and transfer to the said R. W. Brown, as such agent, and to whosoever may hereafter legally represent the said Banking Corporation the following described parcel of land, together with the building and improvements thereon, in the municipality of Manila, province of Manila, Philippine Islands, to-wit:

A one-half interest in a house with galvanized iron roof, with two apartments on the ground floor and two rooms on the upper floor, and the lot upon which the said house stands on Calle Esplanada of the District of Santa Cruz of this City within the northern district of the register of property, numbered 4, 6 and 10, and then numbered 6. It is bounded on the right by lot number 4 belonging to Sabas del Rosario, on the left with lot number 8 belonging to Isabel Corleta, and on the back by lot number 7 fronting on an alley without a name, belonging to Silvino Mapua; the entire lot has a superficial area of three hundred and twenty-meters and forty-five centimeters.

I further declare that I have agreed with the said agent of the International Banking Corporation in his capacity as such that on or before the thirtieth of June of the present year at twelve o'clock P. M. I return to him the two thousand dollars local currency in this City, and pay to him all the expenses which may have been incurred by virtue of this contract, the said R. W. Brown, as such agent for the said Banking Corporation shall be bound to resell to me the property in question, but if on the contrary I fail to make such payment within the time stipulated, the International Banking Corporation shall, upon the expiration thereof, become the absolute owners of the property, free of all liens and encumbrances, and may sell the same to other persons.

I further declare that I have agreed with the said R. W. Brown in his capacity as such agent, and with whosoever may in future represent the Bank, to defend and protect the title to the said property against any just claim by whosoever brought.

In witness whereof I sign these presents this thirteenth day of February, 1903.

178 (Signed)

MARTIN SANDOVAL.

Signed in the presence of:

(Signed) GREGORIO RAMOS.

THE UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this — day of February, 1903, personally appeared before me Francisco Martinez Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free act and deed.

(Signed)

VICENTE G. AZAOLA.

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1st, 1905.

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DEFENDANT'S EXHIBIT No. 70.

By virtue of the present I declare that on the 8th of April last I drew on the International Bank two checks, Nos. 24,184 and 24,185, from the check book of Don Pedro Cantero, which I delivered, for their collection, to Don Ricardo Regidor, and which the latter, not having collected, because the bank refused their payment, the latter gentleman has in his possession, with my consent.

I also declare that I have given on the same date to Don R. R. a check of 9,000 pesos in order that with its amount he should pay at the proper time to Don Gregorio Legaspi, the amount of the sale, with the right to redeem which I made to him of my houses on Calles Aceiteros and Espleta, to redeem the same. I authorize him to delay this payment until the period provided in the respective escrituras with their extension, so as to secure a reduction in the said credit, and that he should retain for his own use during this time the said amount. In order that all of this should appear satisfactorily to Señor Regidor, I sign the present on this 21st day of April, 1903.

180

DEFENDANT'S EXHIBIT No. 71.

MANILA, July 2, 1903.

To the Agent of the International Banking Corporation.

SIR: I beg you to receive a deposit in order to pay the same at the proper time, at the disposition of Don Francisco Martinez, or to whomsoever it may correspond, the enclosed amount of 9,000 pesos, which I have received from the said Señor to pay the amount of the redemption of his houses in Calles Aceiteros and Espeleta, from Don Gregorio Legaspi, and which as I understand it, you have paid to the said Señor Legaspi.

Señor Martinez authorized me to retain and use said sum during the period of the right of redemption, and its extensions, and as you have satisfied said sum and in accordance with the partition of the property of the said Señor with his son, these houses correspond as I believe, to his son, Don Pedro, I believe that it is proper for me to consign this money in your possession for the purpose of the partition.

Respectfully,

RICARDO REGIDOR.

In the municipality of Manila, province of Manila, Philippine Islands, at four o'clock P. M. this twenty-third day of May, 1903 there appeared before me, Vicente G. Azaola, a lawyer and notary public of this City, one Robert Wemyss Brown, to me known, a resident of this City, of age, married, and a merchant by occupation with certificate of registration No. — issued on the — day of — by Mr. — —, Collector of the City of Manila, who stated:

That on the second day of February of the present year Francisco Martinez Garcia executed the public instrument which he exhibited to me in favor of the said R. W. Brown as agent in Manila for the International Banking Corporation, sworn to on the fifth day of the same month before the Clerk of the Supreme Court of Justice of these Islands, in which said instrument was stated, among other things, that in order to secure the payment to the Bank of the sum of Eighty Thousand pesos which the Bank had credited to him in an account current on the thirtieth of January of the previous year, he, the said Martinez, bound himself to deliver to the Bank the property described in the sworn list which accompanied the said instrument as a part thereof, so that the Bank could administer the

same by itself or through some other person, collecting the  
 182 proceeds thereof and retaining the commission to which it was entitled, and crediting the same in the said current account, and promised to exercise no act of dominion over the said property until the said current account was finally settled, except through the Bank, which if necessary would execute in behalf of Martinez such documents as might be required.

But the administration of such property not having as yet been turned over to the deponent, he is compelled under the circumstances to call upon Mr. Martinez to comply with the terms of the agreement, and for this purpose he asks me, as a notary public, to make such demand in legal form and in his behalf upon Mr. Martinez, requiring him under the terms of the contract to immediately deliver to Lorenzo del Rosario y Guillermo, the person designated by the deponent by virtue of the authority conferred upon him, the deponent, in the aforesaid instrument, the administration of the property described in the list in question, excluding that which has been heretofore sold to the deponent, subject to the right of redemption by the vendor, and in order to enable me to comply with

his request, he has delivered to me the instrument above-mentioned and the list accompanying the same.

After having ratified the contents of the foregoing minute, the same having been previously carefully read by him, he signed the same on the date above-mentioned, to all of which I, the undersigned notary, certify.

(Signed)

R. W. BROWN.

183 Thereupon, it being five thirty, P. M., I called on Francisco Martinez y Garcia at his residence No. 62 Calle Lavazeros and while he was in my presence I informed him of the object of this proceeding, and delivered to him at the same time a copy of the preceding document, and having made due demand upon him in accordance with the law, and in conformity with instructions contained in the said document, he stated that he there and then delivered to the persons designated by Mr. Robert Wemyss Brown the administration of the property, authorizing me, the undersigned notary to give the necessary notices to the occupants of the said property, and introduce to them Lorenzo del Rosario y Guillermo as such administrator for Mr. Martinez, excluding from the list attached to the instrument the property heretofore sold, with the right to repurchase, to the International Bank; stating further that if he had not yet turned over such administration voluntarily it was because he had to make some repairs to the property, the entire income having been practically spent thereon, and that for this reason administration by the Bank of the property would have been onerous to the Corporation.

After having carefully read and ratified the contents of the foregoing, he signed these presents on the day above-mentioned, having exhibited to me his certificate of registration number — issued on the — day of — 190— by Mr. — Assessor and Collector of this City, to all of which, and to the fact that Mr. Martinez is known to me, I the undersigned notary hereby certify.

(Signed)

FRANCISCO MARTINEZ.

184 Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

*List of the Property of Francisco Martinez, Showing Its Assessed Value.*

Folio.	Description.	Value.	Amount of tax.
27.	House and lot N. 251-3—Calle Elcano (S. Nicolas) .....	2,488.35	18.63
27.	House and lot N. 156—Calle Caballeros (S. Nicolas) .....	1,320.00	9.75
27.	House and lot No. 156-8—Calle Caballeros Interior (S. Nicolas) .....	575.20	4.30
27.	House and lot N. 86-8—Calle S. Nicolas (S. Nicolas) .....	5,672.60	42.54
27.	House and lot N. 79-83—Calle Barcelona (S. Nicolas) .....	5,222.72	39.17

Folio.	Description.	Value.	Amount of tax.
27.	House and lot N. 97-9—Calle Lara (S. Nicolas) .....	2,581.56	19.36
27.	House and lot N. 101-5—Calle Lara (S. Nicolas) .....	3,125.64	23.44
27.	House and lot N. 100—Calle Sevilla (S. Nicolas) .....	2,941.34	22.06
27.	House and lot N. 94-8—Calle Sevilla (S. Nicolas) .....	3,447.71	25.90
27.	House and lot N. 115-17—Calle Barcelona (S. Nicolas) .....	2,266.98	17.00
27.	House and lot N. 68-76—Calle Lavezares (S. Nicolas) .....	5,820.00	43.63
27.	House and lot N. 66—Calle Lavezares (S. Nicolas) .....	1,934.36	14.50
27.	House and lot N. 93-5—Calle Sevilla (S. Nicolas) .....	2,463.20	18.45
27.	House and lot N. 122—Calle Madrid (S. Nicolas) .....	17,704.40	132.77
27.	House and lot N. 14-22—Calle Peñarubia (S. Nicolas) .....	6,134.24	46.00
27.	House and lot N. 24—Calle Peñarubia (S. Nicolas) .....	5,442.24	40.80
27.	House and lot N. 98-100—Calle Principe (S. Nicolas) .....	2,981.60	22.36
27.	House and lot N. 135-49—Calle Barcelona (S. Nicolas) .....	8,553.88	64.15
27.	House and lot N. 46—Calle Peñarubia (S. Nicolas) .....	2,824.46	21.17
185			
27.	House and lot N. 32-6—Calle Peñarubia (S. Nicolas) .....	2,325.12	17.44
28.	House and lot N. 151—Calle Elcano (S. Nicolas) .....	3,635.84	27.27
28.	House and lot N. 38—Calle Asuncion (S. Nicolas) .....	5,125.76	38.44
28.	House and lot N. 36-44—Calle Jaboneros (S. Nicolas) .....	13,936.78	104.50
28.	House and lot N. 54-47—Calle Peñarubia (S. Nicolas) .....	7,872.32	59.04
30.	Lot # 28.36—Calle Jaboneros (S. Nicolas) .....	385.13	2.88
11.	House and lot # 172—Calle Magallanes (Intramuros) .....	4,736.40	35.52
11.	House and lot # 78—Calle Legaspi (Intramuros) .....	4,273.02	32.05
114.	House and lot # 437-447—Lemery (Tondo) .....	10,176.	76.32
114.	House and lot N. 200-212—Aceiteros (Tondo) .....	17,043.	127.82

Folio.	Description.	Value.	Amount of tax.
25.	Lot with building N. 57—Calle S. Pedro (Quiapo) .....	4,876.60	36.55
40.	House without number interior—Calle Arranque (Sta. Cruz) .....	2,000.00	15.00
67.	House and lot N. 35—Calle Noria (Sta. Cruz) .....	3,308.00	24.81
67.	House and lot N. 113-117—Calle Dulumbayan (Sta. Cruz) .....	6,231.20	46.70
67.	House and lot N. 180-82—Calle Misericordia (interior)—(Sta. Cruz) .....	1,780.	13.35
67.	House and lot N. 180-82—Calle Misericordia (Sta. Cruz) .....	2,186.	16.39
67.	House and lot N. 66-78—Calle Arranque (Sta. Cruz) .....	11,783.20	88.35
67.	House and lot N. 87-93—Calle Espeleta (Sta. Cruz) .....	5,532.80	41.49

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## DEFENDANT'S EXHIBIT No. 73.

Know all men by these presents, that I, Francisco Martinez y Garcia, of Manila, Philippine Islands, residing at number sixty-eight Calle Lavesaros, District of Binondo, of age, married a third time, and a merchant, as representative and administrator of the conjugal partnership with my first wife, Germana Ilustre, do hereby confer as ample and sufficient power as may be requisite and necessary upon the agent in this city of the International Banking Corporation, Robert Wemyss Brown, of this city, of age, married, and a merchant, to, in my name and stead, collect any sum or sums due or to become due as rent from the property belonging to the aforesaid partnership of Martinez Ilustre in the municipality of Balayan in the province of Batangas, at present leased to the United States Government, which rent is payable by the Quartermaster Department, and for this purpose I authorize Mr. Robert Wemyss Brown, in my name and stead, to collect any check or like document issued by the said Quartermaster Department in payment of such obligation.

For this purpose and all things incident thereto, I hereby confer upon him, as creditor of the Quartermaster Department the most ample power, promising to ratify and confirm whatever the said Robert Wemyss Brown may do in the premises.

And to this I obligate myself in the most solemn form required by law.

In witness whereof, I have signed these presents in duplicate in Manila, this fifteenth day of July, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

(Name of another witness, undecipherable.)



187 UNITED STATES OF AMERICA,  
*City of Manila, Island of Luzon,*  
*Philippine Islands, ss:*

In the City of Manila, this fifteenth day of July, 1903, personally appeared before me, Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, which he ratified and acknowledged to be his own free act and deed. He exhibited to me no registration tax certificate, he being exempt therefrom by reason of his advanced age.

In witness whereof, I have hereunto signed my name and affixed my seal of office on the day, month and year above-mentioned.

(Signed)

VICENTE G. AZAOLA,  
*Notary Public.*

My Commission expires January 1st, 1905.

Indorsed: "July 8, '04. H. D. G. V. G. T. C. K."

#### DEFENDANT'S EXHIBIT No. 74.

To all to whom these presents shall come, Be it known that I, Robert W. Brown, of age, married, and the agent in this City of Manila, Philippine Islands, of the International Banking Corporation, in compliance with the order of the Court of First Instance of Manila, Part III, dated June 15th, of this year, approving the agreement of partition made between Don Francisco Martinez Garcia and his son Don Pedro Martinez Ilustre, in which agreement I intervened for the reason that part of the property of the estate of the deceased Germana Ilustre, the late wife of Don Francisco Martinez, had  
 188 been either sold or pledged to the International Banking Corporation, and in compliance also with the terms of the instrument of the same date executed by Don Francisco Martinez for the purpose of complying with the order of the Court relating to the agreement of partition above-mentioned as well as with the terms of the agreement of partition approved by Francisco Martinez in the month of September last, which was also signed by the Bank which I represent, and finally in consideration of the fact that Don Pedro Martinez é Ilustre has also complied with the said judicial order by executing in favor of the undersigned on this date an instrument whereby he sells and transfers to me all the interest which he has or may have in the property, and steamers included in list number two of the agreement of partition, and further, in consideration of the fact that the aforesaid agreement has been actually complied with by the interested parties, the Bank to deliver to Don Pedro Martinez on or about — the property and steamers included in list number one heretofore pledged to it, the same being now in the possession of the said Bank, Don Pedro Martinez having on this date sold and transferred by a public instrument to the International Banking Corporation, his share in the property included in list number two.



Hereby sell and transfer to the said Pedro Martinez the title to the first seven pieces of property and the steamer "Don Francisco" below described, one-half of which the Bank which I represent, has the possession and dominion of, and its rights to the last seven pieces of property and the pilot boat "Marmoque", all of which constitute the whole property included in list number one, in accordance with the aforesaid instrument, as follows:

One-half of the property included in list number one, the first seven pieces of which have been heretofore sold to me by Don Francisco Martinez, and the rest, together with the steamer "Don Francisco" and the pailebot "Marmoque" which were pledged to me, Francisco Martinez having promised to sell the same to me under the contract of partition above referred to, he having delivered to his son, Don P. M., on or about the month of July last the physical possession of the said property and steamer, thereby canceling the lien which the Bank had upon the same. The property hereby sold is included in list number one and is as follows:

\* \* \* \* \*

I hereby declare that I obligate myself to release all the said property and steamers from all lien, encumbrance or liability of any kind whatsoever in such a manner as to place them in the hands of Don Pedro Martinez Ilustre from of all lien or liability.

Accepted.

*List No. 1.*

Belonging to Don. Pedro Martinez é Ilustre.

Value.		Urban property in the city of Manila.	Monthly rental.
34,036.	1.	House and lot Nos. 198 to 236 Calles Aceiteros and Hurtado, 12 doors.	\$705.00 1
7,900.	2.	House and lot No. 180 to 182 Calle Misericordia, 7 doors in the interior.	180.00 2
9,700.	8.	House and lot No. 57 Calle San Pedro 1.	60.00 15
6,600.	9.	House and lot No. 35 Calle Noria 2.	80.00 13
13,400.	10.	House and lot No. 113 to 117 Calle Dulumbayan	160.00 16
9,500.	3.	House and lot No. 78 Calle Legaspi 3.	80.00 4
8,400.	4.	Warehouse and lot Nos. 173 and 136 Calles Sta. Potenciana and Magallanes	105.00 5
190			
35,000.	5.	House and lot Nos. 122 to 147 and 139 Interior Calle San Nicolas, 7 doors.	319.00 6
	6.	House and lot No. 151 Calle Elcano.	90.00 17
	11.	House and lot No. 36 Calle Asunción.	130.00 18
20,000.	12.	House and lot No. 156 and 155 and 160 Interior, Calle Cabelleros, 3 doors	120.00 9
	13.	House and lot Nos. 94, 96 and 98 Calle Sevilla	111.00 23

Value.		Urban property in the city of Manila.	Monthly rental.
7,700.	14.	House and lot Nos. 115 and 117 Calle Barcelona .....	68.00 24
11,000.	7.	Nos. 87 to 93 Calle Espleta .....	180.00 3
30,000.		Steamer "Don Francisco" and pailebot Marmques .....	29
<hr/>			
193,238.			

NOTE (1).—Transferred with the right to repurchase to the C. Commission and by the latter to the Bank.

NOTE (2).—Sold with the right of redemption to Carmen Lon-  
zaga, due —.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

Of the fourteen houses six have been described and the remaining eight are as follows:

(1) 57 San Pedro, sold with the right of redemption to Jose Franco for 3,000 pesos, time to expire December 15th, CC.

(2) 36 Noria id. id. Carmen Gonzaga for 2500, two months' time after partition.

(3) 113-117 Dulumbayan id. id. Fernando Montes, expires December 26, 3000 pesos.

(4) 151 Elcano. To the Varadero together with another 191 on the same street.

(5) 36 Asuncion.

(6) 156 Caballeros.

(7) 94-6 and 98 Sevilla.

(8) 115 and 117 Barcelona.

I hereby declare that the Bank which I represent is in the actual and lawful possession of one-half of the seven pieces of property hereinafter described belonging to Don Francisco Martinez, the Bank having duly recorded its title in the register of property, and that as to the rest Don Francisco Martinez is under the obligation of executing in favor of the Bank the proper deed of sale of his share, the Bank agreeing in any event to guarantee to Don Pedro Martinez the title to the said property and to deliver to him the necessary deeds of transfer as soon as Don Francisco Martinez formally makes the sale, hereby canceling the lien which the Bank has upon the property included in list number one, in conformity with the agreement of partition.

Belonging to the son, Pedro, the Bank has:

House and lot No. 198 to 236 Calles Aceiteros y Hurtado.

Id. Id. 180-182 Misericordia.

Id. Id. 78 Legaspi.

Id. Id. 173 and 136 Magallanes.

Id. Id. 122 to 147 and 139 San Nicolas.

Indorsed: "July 8, '04. H. D. G. V. G. T. C. K."

## DEFENDANT'S EXHIBIT No. 75.

To all to whom these presents shall come, let it be known, that I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at No. 62 calle Lavaderos, district of Binond, of age, married a third time, merchant, by a public executed in this City on the sixth of December, 1902, before the notary public, Felixto Reyes y Cruz, sold, with the right of redemption to Gregorio Legaspi Nieve a one-half interest in the following described two pieces of urban property:

(a) A house of strong material, with galvanized iron roof, consisting of eight apartments, with twelve doors, and the warehouse adjoining the same, also of strong materials, with tile roof, used for the storage of merchandise, and the lot upon which both stand, being numbered nine and fronting on Calle Aceiteros of the District of Fondo of this City, and within the demarcation of the northern district of the register of property. It is at present bounded on the right by a public street without a name, which is an extension of Calle Tabora; on the left by the house and lot of Florencio Basa, and on the back with a lot without number fronting on Calle Santa Elena, belonging to Balbino Ventura. The property is thirty-three yards long by twenty-one deep, having a superficial area of five hundred and seventy-eight square meters and forty centimeters, approximately, the whole area being covered by the said structures; all for seven thousand pesos.

(b) Another house with galvanized iron roof, with two rooms on the ground floor and two rooms on the upper floor, with the land upon which it stands on Calle Espleta of the district of Santa Cruz of this City, and within the demarcation of the northern district of the registry of property, numbered 4, 6, 8 and 10, and then with number 6.

It is bounded on the right by lot number four belonging to Sabas del Rosario; on the left by lot number eight, belonging to Isabel Corleta, and on the back by lot number seven, which fronts on an alley without a name, belonging to Silvino Mapua. The lot, which is entirely covered by the buildings, has a superficial area of three hundred and twenty square meters and forty-five centimeters, all for the sum of two thousand pesos.

This sale was made, subject to the right of the vendor to redeem the property within six months from the date of thereof, extendable for a further period of one year.

Now, in consideration of the sum of nine thousand dollars, Mexican currency, paid to me by the International Banking Corporation through its agent, R. W. Brown of this City of age, married and a merchant by occupation, I hereby sell and transfer to the said R. W. Brown, as such agent, or to whosoever may succeed him as agent of the said Banking Corporation all the interest which I have under the aforesaid deed of sale, under the same conditions therein stipulated, and for this purpose I hereby substitute the Bank for myself.

194 I hereby further agree with the aforesaid agent of the International Banking Corporation that if on or before the thirtieth day of June of the present year at twelve o'clock P. M. I return to him the nine thousand dollars Mexican currency received by me, and pay to him all the expenses which may have been incurred by virtue of this contract, he shall be bound as such agent, or in his absence whosoever may then represent the aforesaid Banking Corporation, to re-transfer to me the rights which I hereby transfer to him, but if on the contrary on the date and hour aforesaid I have failed to repay the sum in question and such expenses as may have been incurred, the Bank shall irrevocably and definitely acquire all the rights inherent in this obligation.

I likewise declare that the aforesaid one-half of the property in question absolutely belongs to me as a part of the conjugal partnership between myself and Doña Germana Ilustre.

And this contract having been entered into with the said Robert Wemyss Brown solely, the latter in his capacity as agent for the Bank hereby expresses his agreement to the foregoing, and both of the contracting parties ratify and sign these presents on this twelfth day of February, 1903.

(Signed)  
(Signed)

FRANCISCO MARTINEZ.  
R. W. BROWN.

Signed in the presence of:

(Signed) JOSE GERVASIO GARCIA.  
" GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

195 In the municipality of Manila, province of Manila, this twelfth day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, and ratified the same as an act of his own free will and deed.

(Signed)

FRANCISCO MARTINEZ.  
R. W. BROWN.

Before me:

(Signed) VICENTE AZAOLA,  
*Notary Public.*

[NOTARY'S SEAL.]

My Commission expires January 1st, 1905.

Filed at ten:ten A. M. this fourteenth day of March, 1903, as per entry number seven hundred and eighty, page two forty-two, volume ten, of the journal.

[REGISTRAR'S SEAL.]

(Signed)

FRANCISCO ORTIGAS.

The foregoing instrument has been recorded at the page and in the volumes and sections specified on the margin opposite the description of each piece of property.

Manila, March 18th, 1903.

[REGISTRAR'S SEAL.]

(Signed)

FRANCISCO ORTIGAS.

Indorsed: (On margin of first description) "Page 73, volume 13, Tondo section, 49 of the Archives, Property number 880, sixth inscription."

196 Indorsed: (On margin of *section* description) "Page 191, volume 16, Quiapo section, 39 of the Archives, Property number 912, fourth inscription."

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

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#### DEFENDANT'S EXHIBIT No. 76.

On or about the month of February of the present year, Francisco Martinez issued in favor of the bank a promissory note of 30,000 pesos, which he remitted to the latter with a letter of that date, authorizing him with its amount to pay the promissory notes which he had in his possession executed by the said Martinez and to pay the receipts which Mr. Cantero would issue as his attorney in fact.

On the 24th of April, 1903, Don Francisco Martinez offered to the bank in guarantee of the promissory note of 80,000 pesos, and of another for the sum of 30,000 pesos, all participation which he had in the steamers Don Francisco Germana, and the Balayan, hypothecating to the Bank his participations in the same.

In the escritura of the 2nd of May, 1903, executed before the notary public, Don Eduardo Gutierrez, there was formulated by Don Francisco Martinez an escritura of pledge of the participation referred to in the steamers Don Francisco and Germana, and in another of the 19th of July, of the steamer Balayan, constituting the same in deposit in the possession of Don Pedro Robles.

On the 15th of June of the same year Don Francisco Martinez, by a public escritura of that date, agreed with the bank as a consequence of the partition of the property of his son Don Pedro, he would sell to him in its entirety the steamer Germana, in exchange for the transfer which he would make to his son of his participation in the steamer Don Francisco.

In consequence of the previous contract the depositary Don Pedro Robles, with the consent of the bank and Don Francisco Martinez delivered to Don Pedro in its entirety the steamer Don Francisco. The Balayan and Germana remaining in the possession of Robles.

198 On the — day of December of this year, Don Pedro Robles renounced his office of depositary of the steamer Germana, delivering it to the Bank, at whose disposition he should have it, according to the escritura of the 2nd of May, of this year. The

steamer Balayan continues in the possession of the depositary Señor Robles.

July 8, 1904.  
H. D. H.  
V. G.  
T. C. K.

To all to whom these presents shall come, I Robert Wemyss Brown, of age, married, and the agent in this City of Manila, Philippine Islands, of the International Banking Corporation, make known: That in compliance with the order of the Court of First Instance of the City of Manila, Part III, dated June fifteenth of this year, approving the partition proceedings between Francisco Martinez y Garcia and his son, Pedro Martinez é Ilustre, which said partition was made with my intervention, part of the estate of the deceased Carmen Germana Ilustre, the wife of Francisco Martinez, being either mortgaged or transferred to the International Banking Corporation, and in compliance also with the terms of the instrument executed on the same day by Francisco Martinez in order to carry out the instructions of the Court of First Instance relating to the partition proceedings aforesaid, and finally, in consideration of the fact that Pedro Martinez é Ilustre, in compliance with the aforesaid order of the Court has this day transferred to me, by a public instrument, subject to the right of redemption, all of the property, in which he had a one-half interest, and which fell to his father, Francisco Martinez in the aforementioned partition, the said Francisco Martinez having heretofore transferred to me the other half to secure his indebtedness to the Bank, I hereby sell and transfer to Pedro Martinez é Ilustre the property and steamers which fell to him in the partition of the estate and which his father, Francisco Martinez, had theretofore sold to me, described as follows:

200 Number One. A house of strong material with galvanized iron roof, consisting of eight apartments, with twelve doors and a warehouse adjoining the same, also of strong material, with tile roof, used for the storage of merchandise and the lot upon which it stands, formerly numbered nine, and at present numbered one ninety-eight to two hundred and forty, both inclusive, and to this extent list number one is hereby amended, fronting on Calle Aceiteros, of the District of Tondo of this City and within the demarcation of the northern district of the registry of property. It is at present bounded on the right by a public street, formerly without name and now known as Calle Antonio Hurtado, which is an extension of Calle Tabora; on the left by the house and lot of Florencio Basa and on the back by a lot without number, fronting on Calle Santa Elena, belonging to Balbina Ventura.

The property thus described is thirty-three yards long, by twenty-one deep, giving it a superficial area of five hundred and seventy-

eight square meters and forty centimeters approximately, the whole and being occupied by the building.

By a public instrument executed on the sixth of December, 1902, before the notary public of this City, Calixto Reyes y Cruz, Francisco Martinez sold, with the right of redemption, to Gregorio Legaspi Nieves a one-half interest in the above described property for the sum of seven thousand pesos, repurchase to be made within six months from the date of the execution of the sale, this period being extendable for one year.

201 By another instrument executed on the 12th of January of the present year, 1903, before the notary, Vicente G. Azaola, the said Francisco Martinez y Garcia sold and transferred for a valuable consideration, to-wit, seven thousand pesos, to the legal representative of the International Banking Corporation the right of repurchase which he had with reference to a one-half interest in the aforesaid property. Insofar as it concerned the Bank a record was made in the registry of property at page 73, volume 13, District of Tondo, 49 of the Archives, property number 880, third inscription.

By a public instrument executed on the 29th of May, last, before the notary public, Vicente G. Azaola, the Bank made use of the right of repurchase which had been transferred to it by Francisco Martinez by repaying the purchase price of seven thousand pesos to Gregorio Legaspi Nieves, record of this transaction having been made at page 113, provisional volume 4 of the District of Tondo, property number 880, duplicate, sixth inscription.

By another public instrument executed before the said notary, Vicente G. Azaola on the fifteenth of June last, the legal representative of the International Bank obligated himself to sell forever to Pedro Martinez all the houses, a one-half interest in which had previously been transferred or mortgaged as the property of Francisco Martinez, and to deliver the same free of any lien or incumbrance under the conditions therein stipulated, one of which was the acknowledgment of an indebtedness on the part of Francisco Martines in the sum of seven thousand pesos to the aforesaid International Banking Corporation, which said sum of 202 seven thousand pesos represented the purchase price of the property in question.

Number Two. Another house, with seven apartments at the back of the same, of strong materials, and the lot upon which it stands, formerly numbered 42, and at present 180 to 182, included in list number one, and fronting on Calle Misericordia of the District of Santa Cruz and within the demarcation of the northern district of the registry of property. It is bounded on the right with the house of strong materials, number four, belonging to Santos Donato; on the left by another apartment house, numbered forty-four, belonging to Francisco Bautista, and on the back by the river Sibacon. This property is fifty meters and ninety-one centimeters long by thirty-eight meters and fifty-eight centimeters deep, giving it a superficial area of six hundred and twelve square meters and sixty-nine square centimeters, of which the house occupies one hundred



and sixty-eight square meters and the seven apartments one hundred and thirty square meters and forty-three centimeters.

This property is registered in the registry of property at page 175 of volume 3, District of Quiapo, and 12 of the Archives, property number 223.

By a public instrument executed on the 23rd of March of the present year, 1903, before the notary public, Vicente G. Azaola, 203 Francisco Martinez y Garcia, transferred to the International Banking Corporation a one-half interest in the property in question for the sum of four thousand pesos, subject to the vendor's right to redeem the same on or before the thirtieth of June of the same year. This transfer was recorded in the register of property on the twentieth of April, at page 196, volume two, provisional, of the District of Quiapo, property number 223, triplicate, third inscription.

Number Three. Another house and the lot upon which it stands on Calle Legaspi, Intramuros, formerly numbered 17, and at present numbered 78, this being the property under which it appears in list number one. It is bounded on the right and back with the house and lot of Eduardo Litongua, and on the left by the house and lot of José Celis. The property is fourteen meters and forty-eight centimeters long by eighteen deep, making a superficial area of two hundred and sixty square meters and sixty-four centimeters.

The original title deed to this property is not at hand and for this reason no description of the same is given.

By a public instrument executed on the seventh of April of the present year, 1903, before the notary Vicente G. Azaola, Francisco Martinez y Garcia, sold to the International Bank, represented by Robert Wemyss Brown, a one-half interest in the property above described for the sum of one thousand five hundred pesos, subject to the vendor's right to repurchase the same by paying the purchase price agreed upon on or before the thirtieth of June of the present year.

204 This conditional transfer was recorded in the registry of property on the 20th of April at page 180, volume one, book three of the District of Intramuros, property number 131, third inscription.

Number Four. Another house and the lot upon which it stands on Calle Magallanes, Intramuros, formerly numbered 31 and 33 and at present numbered 172, and formerly number 7 and at present number 133, and further numbered 142, 136, 172 and 188, it appearing in list number one under numbers 173 and 136 of Calle Santa Potenciana. It is bounded on the front by the said Calles Magallanes and Santa Potenciana; on the right by the house and lot of Manuela Molina, widow of Grey; and on the left and back by the house and lot of the Reverend Juan Adriano.

The original title deed of this property is not at hand, and for this reason no description of the same is given.

By a public instrument executed on the twenty-third of March of the present year, 1903, before the notary, Vicente G. Azaola, Francisco Martinez y Garcia sold to the International Bank, represented by Robery Wemyss Brown, a one-half interest in the prop-



erty above described for the sum of five thousand pesos, Mexican currency, the vendor reserving to himself the right to repurchase the same by repaying the purchase price on or before the thirtieth of June of the present year. This transfer was recorded in the registry of property on the fifteenth day of April at page 132, volume one, book four of the District of Intramuros, property one-sixty-one, thirty-ninth inscription.

05 Number Five. Another house consisting of four separate apartments, with nine doors, and the lot upon which it stands, formerly numbered forty and at present numbered 122 to 147, 139 interior, under which numbers it appears in list number one, situated on Calle San Nicolas of the District of Tondo, and within the northern demarcation of the register of property. It is bounded on the right by a vacant lot, number 38, belonging to Antonio Aguirre; on the left by Calle Madrid; and on the back by a house of strong materials and lot numbered 30, belonging to Maria Bustamante, which latter property fronts on Calle Madrid. The lot in question has a superficial area of six hundred and forty-four square meters and five hundred and sixty-six milimeters, of which the house occupies three hundred and twenty-four square meters and three hundred and one milimeters, according to a certificate issued by the register of property on the sixteenth day of March last, this being the only document that we have before us. The property in question was acquired by Francisco Martinez by purchase from Bonifacio Bustamante y Elchico for the sum of fourteen thousand pesos, according to a public instrument executed on the fourteenth of November, 1894, before the notary Calixto Reyes y Cruz.

By a public instrument executed on the thirteenth of February, 1903, before the notary Vicente G. Azaola, Francisco Martinez y Garcia sold to the International Bank the above described  
206 property for the sum of fourteen thousand pesos, reserving to himself the right to redeem the same on or before the thirtieth of June of the same year.

By an additional instrument executed on the sixth of March of the same year before the notary who authorized the previous one, Don Francisco Martinez, as party of the first part, and the agent of the International Bank, as party of the second part, agreed that a one-half interest instead of the entire interest in the aforesaid property be considered as transferred, the other one-half interest belonging to the conjugal partnership of Germana Ilustre.

This conditional sale of a one-half interest in the said property was recorded in the registry of property on the third of March, last, at page 65, volume 9 of the District of Binondo, 27 of the Archives, property number 432, fifth inscription.

Number Six. Another house, with galvanized iron roof, consisting of two apartments on the ground floor, and two rooms on the upper floor, and the lot upon which the said house is built on calle Espleta of the District of Santa Cruz of this City, and within the demarcation of the northern district of the register of property, numbered four, six, eight and ten, and then number six, which numbers have been changed for numbers 87 to 93, these being the

numbers under which it appears in list number one. It is bounded on the right by lot number eight, belonging to Isabel Carlota, and on the back by lot number seven, fronting on an alley with  
 207 out a name, belonging to Silvino Mapua. The whole land which is entirely occupied by the house, has a superficial area of three hundred and twenty square meters and forty-five centimeters.

The original title deed to this property is not at hand and for this reason no description of the same is given.

By a public instrument executed on the sixth of December, 190 before the notary, Calixto Reyes y Cruz, Francisco Martinez sold with the right of redemption, to Gregorio Legaspi y Nieves, a one half interest in the property above described for the sum of two thousand pesos, repurchase to be made within six months from the date of the execution, said period being extendible for one year.

By another instrument executed on the twelfth of February of the present year before the notary, Vicente G. Azaola, the said Francisco Martinez y Garcia sold and transferred for a valuable consideration, to-wit, two thousand pesos, to the representative of the International Banking Corporation, the right of redemption which he had with reference to the property in question.

This transfer was recorded in the registry of property at page 191, volume 16 of the District of Quiapo, and 39 of the Archdiocese property number 912, fourth inscription.

By an instrument executed on the 29th of May, last, before the notary, Vicente G. Azaola, the International Bank made use of the right of redemption so transferred to it by Francisco Martinez, paying the price of two thousand pesos to Gregorio Legaspi y Nieves, this transaction having been recorded at page 191, volume 16 of the district of Quiapo, and 39 of the Archdiocese property number 912, fifth inscription.

By another instrument executed before the same notary Vicente G. Azaola on June 15th last, the representative of the International Bank obligated himself to sell forever to Pedro Martinez all the houses and half interest in which had been previously sold and otherwise mortgaged to the Bank as the property of Francisco Martinez, and to deliver the same free of any lien or encumbrance under the conditions therein stipulated, one of which was the acknowledgment of an indebtedness on the part of Francisco Martinez to the said Banking Corporation in the sum of two thousand pesos, being the purchase price of the property in question.

I further make known: that I have hereby released and cancelled the mortgages which this Bank had upon the steamer "Don Francisco," a description of which is as follows: Steamer "Don Francisco," with high and low pressure engines, of twenty-five horsepower, brigantine rigged, wooden hull copper sheathed.

This boat was bought in Hong Kong in the year 1893 for \$10,000 by George Armstrong for the sum of nineteen thousand pesos, as appears from a document signed in the presence of the Spanish Consul at that port, and the public instrument numbered two hundred

and seventy-three relating to the acceptance of the sale, executed before the notary Calixto Reyes y Cruz on the twentieth of June, 1893.

The dimensions are as follows: Length, thirty-one meters and fourteen centimeters; beam five meters and fifty centimeters, and depth two meters and nine centimeters, with a gross tonnage of one hundred and five and twenty-six one-hundredths tons, according to a certificate issued on the 29th of May, 1893, by the Admeasurer Luis Ruiz Moreno. This ship was appraised the nineteenth of May, 1893, in the sum of fifteen thousand pesos.

By a public instrument executed on the second of May last before the notary, Eduardo Gutierrez Repide, Francisco Martinez y Garcia borrowed from the International Bank the sum of thirty thousand pesos Mexican currency at eight per cent per annum, pledging therefor a one-half interest in the steamer above described and the one hereinafter described, obligating himself to repay principal and interest on the second of August of the present year, together with all expenses which might be incurred by his failure to comply with this obligation.

I further make known, That with reference to the property on Calles Aceiteros and Espeleta, described under numbers one and six of this instrument, Francisco Martinez, having admitted his indebtedness to the Bank in the sum of nine thousand pesos, paid by the latter upon the purchase price, these presents shall be subordinate to the stipulations contained in the instrument of the fifteenth of June, hereinbefore mentioned, and consequently the rights of Don Francisco herein are transferred to his son, Don Pedro.

Acceptance. And, whereas, the agreement entered into on the fifteenth of June last, between Mr. Robert Wemyss Brown and Francisco Martinez y Garcia, was also entered into by Pedro Martinez Ilustre, of age, married, and a property owner, he the said Pedro Martinez hereby declares that he accepts and agrees to all the foregoing.

Wherefore, the contracting parties, after having carefully read this instrument acknowledged and ratified its contents and signed these presents in Manila this seventh day of November, 1903.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

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## DEFENDANT'S EXHIBIT No. 78.

MANILA, March 20, 1903.

Mr. R. W. Brown, Director of the International Banking Corporation, Present.

MY DEAR SIR: I forward to you for collection the enclosed promissory note for the sum of 14,000 pesos, against Don Francisco Martinez, which matures on the 23rd inst., in order that you may, on verifying such collection, credit the amount therefor to me, in account current, or if same is not paid by the maker or endorsers,

protest it, returning at the proper time to me the document protested, for my account.

I am,

Yours truly,  
(Signed)

ENRIQUE F. SOMES.

(Continuation of Exhibit No. 78.)

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twenty-fourth day of March, nineteen hundred and three, before me Vicente G. Azaola, a notary public in and for the said City, personally appeared Enrique F. Somes of this City, of age, married and a property holder, who exhibited to me a promissory note executed by Francisco Martinez for the purpose of having the same protested for nonpayment, which said note is as follows: "Don Francisco Martinez—\$14,000\$—due March 23rd 1903—, I, Francisco Martinez hereby promise to pay within the unextendible time of four months from date to Tomas G. del Rosario the sum of fourteen thousand pesos (\$14,000) received from him in local currency to my entire satisfaction for mercantile operations, the latter being empowered to have this note evidenced by a public document whenever he desires. In witness whereof I sign this note in Manila, this 23rd day of November, 1902, in the presence of the witnesses Dalmacio T. Cruz and Pedro Ganaria.—Francisco Martinez—rubric.—Dalmacio T. Cruz.—rubric.—Pedro Ganaria.—rubric."

"Pay to the order of Attorney José Basa Enriquez the sum of fourteen thousand pesos, Mexican currency, upon this note, the value received in local currency to my entire satisfaction for mercantile operations. Manila, March 13th, 1903. Thomas G. del Rosario, rubric. Seal "Tomas G. del Rosario," attorney-at-law".

"Pay to the order of Enrique F. Somes, for value received in Manila, March 19th, 1903.—Jose Basa—rubric.—ten cent documentary stamp."

The foregoing is a true and literal copy of the original note which

I have rubricated and retained in my possession for the purpose of demanding payment thereof. By virtue thereof and it being twelve o'clock, noon, I called at the residence of Francisco Martinez, number 62 Lavesares, Binondo, and having made due demand upon him for the payment of this note, he answered: "That he has given competent authority to Pedro Cantero Enriquez, residing at number 241, Palacio street, Intramuros, to pay all his outstanding obligations, and that this demand should be made upon the said Cantero." Whereupon I protested the note notifying Mr. Martinez that he would be liable for any damages which might be incurred by the nonpayment of this obligation, reserving to the aggrieved party all the rights which he has against the person liable. In witness whereof Mr. Mar

and the witness to this proceeding signed their names hereto. The above quoted note has been duly returned.

(Continuation of Exhibit No. 78.)

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twenty-third day of March, 1903, before me, Vicente G. Azaola a notary public in and for the said City, personally appeared one Gabriel Schmid, of this City, of age, married, and a merchant by occupation, who exhibited to me a promissory note executed by Francisco Martinez, for the purpose of having the same protested for non-payment, which said note is as follows:

214 "Note for Thirty-two thousand pesos in favor of Gonzalo Reyes, payable on demand. Manila, September 18th, 1902. Francisco Martinez. rubric—\$32,000\$.

"Paid on account of this note three thousand pesos. Binondo, September 22nd, 1902. Francisco Martinez—rubric.

"Paid on account of this note six thousand pesos. Binondo, September 29th, 1902. Francisco Martinez—rubric.

"This note for twenty-three thousand pesos, Mexican currency, is hereby endorsed to Lucas Gonzalez this 23rd day of February, 1903. Gonzalo Reyes—rubric.

"This note for twenty-three thousand pesos Mex. is hereby endorsed to Gonzalo Reyes. Manila, March 16th, 1903. Lucas Gonzalez. rubric.

"Pay the balance of this note to wit, twenty-three thousand pesos to Gabriel Schmid from whom I have received the said amount in the presence of the witnesses who sign with me herein. Manila, March 18th, 1903. Gonzalo Reyes. rubric. Sebastian Lozano. rubric. José Gervacio Garcia. rubric."

The above quoted note has been duly returned to holder.

The foregoing is a true and literal copy of the original note which I have rubricated and retained in my possession for the purpose of demanding payment thereof. By virtue thereof, and it being three o'clock P. M. of the same day, I called at the residence of Francisco

Martinez, number 62 Lavezares, Binondo, and having made  
215 due demand upon him for the payment of this note, he answered: "That he has given competent authority to Pedro

Cantero Enriquez, residing at number 241 Palacio street, Intramuros, to pay all of his outstanding obligations and that this demand should be made upon him," whereupon I protested the said note, notifying Mr. Martinez that he would be liable for any damages which might be incurred by the nonpayment of this obligation, reserving to the aggrieved party all of the rights which he may have against the person liable. In witness whereof Mr. Martinez and the witnesses to this proceeding also signed their names hereto.

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MARIANO MARTINEZ, ETC., VS.

216

DEFENDANT'S EXHIBIT No. 79.

MANILA, *March* 18, 1903.

No. 27285.

Pay ——— or Bearer Dollars Three thousand mex.

\$#3000.00#

Local Currency.

(Signed)

PEDRO CANTERO.

Stamp on face: For the credit of the account of D. E. F.

Stamp on face: Accepted, Manila, March 18th, 1903. For the  
International Banking Corporation.

(Signed)

R. W. BROWN, *Manager*.

Indorsed on back: Received: Pedro Cantero.

Indorsed on back, on other end, with rubric.

DEFENDANT'S EXHIBIT No. 80.

MANILA, *March* 19, 1903.

No. 27288.

The International Banking Corporation, Manila.

(Revenue Stamp.)

Pay ——— or bearer Dollars Three thousand five hundred  
mex.

\$3500.00#

R. W. B.

(Signed)

PEDRO CANTERO.

Indorsed on back with rubric followed by name of "Sebastian  
Lozano."

217

DEFENDANT'S EXHIBIT No. 81.

MARCH 18, 1903.

No. 2285.

Baza p. (promissory note?) of 14,000 collected by me.

Countersigned

R<sup>do</sup>.

\$3000#

DEFENDANT'S EXHIBIT No. 82.

MARCH 19, 1903.

No. 27288.

A. of P. of M. Gonzalo Reyes. Collected.

\$3500#

SEBASTIAN SORANO.

## DEFENDANT'S EXHIBIT No. 83.

No. 24038.

MANILA, April 21, 1903.

The International Banking Corporation, Manila.

Pay ——— or Bearer, Dollars Five thousand, two hundred  
and fifty pesos mex.

\$5250\$

Local Currency.

R. W. B.

(Signed)

FRANCISCO MARTINEZ.

Revenue Stamp.)

Endorsed on back: Francisco Martinez.

" " " (Illegible signature.)

" " " at other end with a rubric.

Endorsed: "July 12, '04. T. C. K. C. G. M."

## DEFENDANT'S EXHIBIT No. 84.

No. 24039.

MANILA, April 21, 1903.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Two thousand pesos mex.

\$2000\$

Local currency.

R. W. B.

(Signed)

FRANCISCO MARTINEZ.

Stamp: Cash.

Endorsed on back: Francisco Martinez.

" " " Manuel Ramirez, May 7, 1903.

Endorsed: "July 12, '04. T. C. K. C. G. M."

## DEFENDANT'S EXHIBIT No. 85.

No. 24029.

MANILA, March 8, 1903.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Five thousand mex.

\$5000\$

Local Currency.

R. W. B.

(Signed)

FRANCISCO

MARTINEZ.

Revenue Stamp.)

Stamp across face illegible.)

Endorsed: "July 12, '04. T. C. K. C. G. M."

## DEFENDANT'S EXHIBIT No. 86.

MANILA, *February 3, 1903.*

No. 24016.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Three thousand mex.  
\$3000\$

Local Currency.

R. W. B.

(Signed)

FRANCISCO MARTINEZ.

Indorsed: Isidro Martinez.

Indorsed: "July 12, '04. T. C. K. C. G. M."

219

## DEFENDANT'S EXHIBIT No. 87.

MANILA, *January 20, 1903.*

No. 24002.

The International Banking Corporation, Manila.

Pay ——— or Bearer, Dollars, Four thousand pesos mex.  
\$4,000 #

Local currency.

R. W. B.

(Signed)

FRANCISCO MARTINEZ.

(Revenue Stamp.)

Indorsed on back: Wiget &amp; Nabolhardt.

Indorsed: "July 12, '04. T. C. K. C. G. M."

## DEFENDANT'S EXHIBIT No. 88.

MANILA, *January 30, 1903.*

No. 24011.

(Revenue Stamp.)

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars One thousand pesos.  
\$1000\$

Local currency.

R. W. B.

(Signed)

FRANCISCO MARTINEZ.

Indorsed on Back: Isidro Martinez.

Indorsed: "July 12, '04. T. C. K. C. G. M."



DEF'T'S EX. #89.

MANILA, February 21, 1903.

No. 24026.

(Revenue Stamp.)

The International Banking Corporation, Manila.

Pay ——— or bearer, Dollars Five hundred pesos mex.  
\$500\$(Signed) R. W. B.  
FRANCISCO MARTINEZ.

Indorsed on back: E. Harvey (?).

Indorsed: "July 12, '04. T. C. K. C. G. M."

20

DEFENDANT'S EXHIBIT No. 90.

MANILA, May 21, 1903.

No. 24043.

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars One thousand six hundred and  
fifty pesos Mex.  
\$1650\$

Local currency.

(Signed) FRANCISCO MARTINEZ.

Indorsed on face: Accepted. Manila, 26 June, 1903. For the  
International Banking Corporation.(Signed) R. W. BROWN, *Manager*.

Stamp: Cash.

Indorsed on Back: Francisco Martinez.

" " " Tomas Hipolite.

" " " Paid to Early &amp; White, Attorney-.

" " " (Signed) Y. Martinez.

" " " Early & White, by Edward H. White, one  
of the firm.

Stamp: American Bank, Manila. Paid Jun- 26, 1903.

## DEFENDANT'S EXHIBIT No. 91.

MANILA, Aug. 5th, 1903.

No. 17852S.

Pay Early & White of Bearer Two thousand five hundred pesos  
mex. Silver Dollars.  
\$2500.00.

(Signed) R. W. B. FRANCISCO MARTINEZ.

(Revenue Stamp.)

Stamp: Paid. Cash.

Indorsed on back: Early &amp; White by Edward H. White, one of the firm.

Stamp: American Bank, Manila, P. I. Paid Aug. 6, 1903.

Indorsed: "July 12, '04. T. C. K. C. G. M."

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## DEFENDANT'S EXHIBIT No. 92.

MANILA, April 20, 1903.

No. 24037.

The International Banking Corporation, Manila.

Pay Ramon R. Papa or Bearer Dollars Four thousand mex.  
\$4000\$

(Signed) R. W. B. FRANCISCO MARTINEZ.

Stamp: Transfers.

Indorsed on back with rubric.

" " " Juan Papa.

Indorsed: "July 12, '04. T. C. K. C. G. M."

222

## (DEFENDANT'S EXHIBIT No. 93.)

Casa Commission—Manila. Escolta, Pasage de La Paz No. 8.  
Telegraph Address—Cami. P. O. Box —. Telephone No. —.

No. 11.

MANILA, September 15, 1903.

I hereby promise to pay in Manila on the fifteenth of October,  
next, to the order of Sy Chuy Chim the sum of 5868-97/100 pesos  
value received in currency for mercantile operations.

\$ Five thousand eight hundred and sixty-eight pesos. P. Cur-  
rency.

(Signed)

FRANCISCO MARTINEZ.

Endorsed: For 838.43½PP of Rangoon rice contained in 500  
bags at P7.00 per picul, alongside the steamer Balayan.

5868.97.

Manila, September 15, 1903.

(Signed)

FRANCISCO MARTINEZ.

Endorsed: Pay to the order of ——— value received. Manila  
of ——— 190—.

(Signed)

SY CHUY CHIM.

Endorsed: Received payment for the International Banking Cor-  
poration.

C. S. HAROLD, *Manager*.

Factor: (Signature illegible.)

Rubber stamp: (Sy Chuy Chim—Pasage de la Paz No. 8. Es-  
colta, Manila.

Rubber stamp: Casa Comision de Fincas, Pasage de la Paz  
No. 8. Escolta, Manila.

Rubber Stamp: International Banking Corporation, No.  
Manila.

Endorsed: "July 8, '04. H. D. G. V. G. T. C. K."

#### DEFENDANT'S EXHIBIT No. 94.

The Agent of the International Bank.

MY DEAR SIR: I pray that the amount of the promissory note of  
100 pesos given to you on this date shall be used for the payment  
of my obligations accepted by your bank, or in its possession, con-  
sisting of the respective checks of Don Pedro Cantero, my attorney  
in fact.

Very respectfully,

(Signature apparently torn off.)

#### DEFENDANT'S EXHIBIT No. 95.

MANILA, P. I., *January 30, 1903.*

R. W. Brown, Present.

MY DEAR SIR: I desire to obtain from you the opening in your  
account of a credit of from 80,000 to 100,000 pesos, Mexican currency,  
current, offering you a guarantee of the balance which  
will result from every semi-annual liquidation and mortgage of  
the properties to which the attached tax receipts refer to cover  
said sum, executing in your favor at the same time an irrevocable  
power of attorney, until I may have completely settled the same, for  
administration of properties, the proceeds of which you may  
pay to me in the proper account; and in order that you may col-

lect the same or sell them judicially or extra-judicially, as may be most convenient to your interests, in case on the date indicated for semi-annual balance, the balance resulting against me may not be recovered, and it should not be convenient for the bank to hold the credit open for another half year.

225 If this is agreeable, you can order immediately the necessary escrituras, which from this moment I obligate myself to execute as soon as I am required to do so.

Very respectfully,

FRANCISCO MARTINEZ.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

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DEFENDANT'S EXHIBIT No. 96.

"\$80,000.00XX

I hereby promise to pay in Manila on the thirtieth of June next to the order of the International Banking Corporation the sum of eighty thousand pesos Mexican currency, value received in cash for mercantile operations, secured as stated in the letter attached to this note.

Manila, February 2nd, 1903.

(Signed)

FRANCISCO MARTINEZ.

Indorsed: "July 8, '04. H. D. G. V. G. T. C. K."

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DEFENDANT'S EXHIBIT No. 97.

MANILA, P. I., February 2, 1903.

R. W. Brown, agent in Manila of the International Banking Corporation, Present.

MY DEAR SIR: In guarantee of the attached promissory note of 80,000 pesos, the amount of which I beg of you to credit in account current, with a discount of 8 per cent, I obligate myself, constitute and do constitute in favor of your bank a special and express mortgage of all the properties of my ownership which figure in the attached list, conferring upon you without prejudice to that obligation a general administration of them, and the collecting of their proceeds, in order that you may credit them in the proper account on striking the final balance of the same on the 30th of June next: authorizing you to sell them judicially or extra-judicially, in case of the existence on that date of any balance against me if the bank should not care to continue the operations, renewing the present obligation, or that which may result from striking said balance, to which effect I obligate myself without any excuse or pretext to elevate this obligation to a public document in accordance with the conditions which the new notarial and mortgage legislation authorizes.

as also I agree not to exercise any act of dominion or operation over said properties unless it be through said bank, for which purpose I deliver to the same the corresponding titles to said properties.

Very respectfully,

FRANCISCO MARTINEZ.

July 8, 1904.

H. D. G.

V. G.

T. C. K.

228

DEFENDANT'S EXHIBIT No. 98.

On Sunday February the fifteenth, Martinez gambled and paid for what he lost with a solitaire diamond ring which he bought last week from a broker for 1600 pesos, paid by check on Monday the sixteenth.

Find out the name in the note of 20,000 pesos for which he paid 8,000 when the American attorneys presented it to him and see if he still has a promissory note for 6,000 and two notes for 3,000 which he has also paid; they must have some connection with the promissory note for P20,000 referred to and paid.

DEFENDANT'S EXHIBIT No. 99.

Of the first three thousand he paid one thousand; of the second six thousand, two thousand in the following form: one thousand seven hundred and eighty-eight cash and two hundred and twelve on the following day to the same party, making a total of two thousand. He paid therefore one-third.

DEFENDANT'S EXHIBIT No. 100.

Promissory note.....	23000.
id. ....	18000.
id. ....	36000.
id. ....	24000.
id. ....	20000.
id. ....	5000.
id. ....	10000.
id. ....	20000.
Deed .....	15000.
id. ....	14 to 16000.
Total.....	187,000.

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(DEFENDANT'S EXHIBIT No. 101.)

In the municipality of Manila, province of Manila, Philippine Islands, at four o'clock, P. M. of the twenty-third of May, 1903, before me, Vicente G. Azaola, attorney at law and notary public in and for the said City, personally appeared Robert Wemyss Brown,

to me known, of this City, married, and by occupation a merchant, with registration tax certificate Number 153141, issued May 13th, 1903, by A. W. S. Hastings, Collector of the City of Manila, and deposed as follows:

That on the second day of February of the present year Francisco Martinez Garcia executed a public instrument which he exhibited to me, and which I rubricated, in favor of the deponent as the agent in Manila of the International Banking Corporation, sworn to on the fifth of the same month before the Clerk of the Supreme Court of Justice of these Islands in which document it was stated, among other things, that for the purpose of securing the payment to the Bank of the sum of eighty thousand pesos which the Bank had credited to him in account current on the thirtieth of January, last, he agreed to deliver to the latter the property described in the sworn statement which accompanied the said instrument, so that the Bank might administer the same by itself or through its agents, collecting the proceeds and retaining such commission as might be proper, crediting the balance to the account current above mentioned, 230 obligating himself not to execute any acts of ownership over the said property until the said account is entirely settled, except through the Bank, which if necessary will execute in behalf of Mr. Martinez such documents as may be required.

Mr. Martinez having failed so far to turn over to the Bank the administration of the said property, deponent saith that he is compelled to make demand upon Mr. Martinez for the said administration and for this purpose has called upon me as notary public, to, in his behalf, make such demand upon Mr. Martinez in a legal manner, requiring him to turn over such administration by delivering forthwith to Lorenzo del Rosario y Guillermo, designated by him under the terms of the aforesaid instrument, the property in question, except such as has been heretofore sold to the Bank with the right of redemption, deponent having delivered to me the deed hereinbefore mentioned and the list of property thereunto attached.

After carefully reading and ratifying the foregoing, deponent signs these presents on the date hereinbefore set forth, to which I, the notary, certify.

(Signed)

R. W. BROWN.

(Signed)

VICENTE G. AZAOLA.

Whereupon, at five-thirty P. M. I called at the residence of Francisco Martinez y Garcia, 62 Lavezares, and after informing him of the object of this proceeding I delivered to him a copy of the 231 above instrument, and having made due demand upon him in accordance with the terms of the foregoing document, he said: That he was ready at any time to deliver to the person designated by Mr. Robert Wemyss Brown the administration of the property in question, and authorized me, the undersigned notary to give the necessary notice to the tenants, introducing to them Lorenzo del Rosario de Guillermo as such administrator, excluding from the list which accompanies the instrument in question such property as has been heretofore sold with the right of redemption to the said International Bank. Mr. Martinez further stated that if he had

not voluntarily done so before, it was because he had to make some repairs to the property for which practically all of the income had been spent and he thought that under such circumstances the administration would have been more of a burden to the Bank than anything else.

After having carefully read the foregoing, he ratified the contents thereof and signed these presents on the date hereinbefore set forth, exhibiting to me his registration tax certificate number — issued on the — day of — 190— by Mr. — — Collector of the City of Manila, to all of which, as well as to the fact that I know Mr. Martinez personally, I certify:

(Signed)

FRANCISCO MARTINEZ.  
VICENTE G. AZAOLA.

(Signed)

In the City of Manila at nine-thirty A. M. this twenty-fifth day of May, 1903, I called at the Office of Lorenzo del Rosario at number 77 Analogue, District of Binondo, to me known, of age, married and a property holder, and informed him of the object of these proceedings, whereupon he stated that he there and then accepted the office to which he had been designated by Mr. Robert Wemyss Brown, the agent of the International Banking Corporation, obligating himself to administer the property included in the list which accompanied the instrument, to the correctness of which I certify, and of which I gave him a copy, duly authenticated, the said del Rosario having sworn that he would fulfill the duties of his office faithfully.

After having carefully read the foregoing, — ratified the same and signed these presents, to which I certify.

(Signed)

LORENZO DEL ROSARIO.  
VICENTE G. AZAOLA.

(Signed)

On may twenty-fifth, 1903, I called at number forth-five Peñaubia, District of Binondo, city of Manila, and having in my presence a woman who claimed to be Vicenta Zuigo, the wife of Florentino Gonzalez, who occupied the said house as a tenant for a monthly rental of thirty-four pesos, I notified her so that she might inform her husband, of the object of these proceedings and I thereupon told her that hereafter she should not pay the rent to the owner of the house.

### DEFENDANT'S EXHIBIT No. 102.

Received your letter and note that you desire a transfer of the account to Conant. Yes, it shall be arranged as soon as possible. It would be well that you instruct your clerk to receive and deliver you the letters directed to Cantero.

Envelope accompanying same addressed: "Sr. Cantero Casa Co-  
mission."

## DEFENDANT'S EXHIBIT No. 103.

Can you sent to me two little books like the one which the bearer has with him, in order to keep the accounts of the Chino in Mexico and Conant? I would be obliged to you if you would note in them the balance up to the first of September, in both accounts, or the one which you may have done up to the latest day. You had just left your house when I arrived. I was sorry not to see you.

(Sgd.)

C.

I will order two books prepared and send them as soon as they are finished up to date. In the report of Scott nothing is said in reference to the value of the Luisa. I suppose that you are very well satisfied with respect to that.

Envelope accompanying above addressed: "Mr. Brown, Present."  
Indorsed in red pencil: "from R. W. B."

## DEFENDANT'S EXHIBIT No. 104.

The bearer is the muchacho of this house: Please tell me if you are going to come here or to your house.

(Sgd.)

CANTERO.

If there is nothing of importance I shall not come to-day. If you care to say anything of importance to me I will come at 4:45 to the office. If I do not hear from you I shall not come. I can see you to-morrow.

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## DEFENDANT'S EXHIBIT No. 105.

I believe that it is not advisable to make the operation with the property in Anloague. I will explain it to you later. I need a check to-day of 2,086.87 to pay the promissory note of Si Chuy Chin (When . . . the collection.)

## DEFENDANT'S EXHIBIT No. 106.

September 24, 1903. Have you arranged the promissory note of Mascuñana? How is the business in the Laguna? It appears that the natives there cause much disturbance. There is no fear about the launches. I have sent the telegram with respect to the credit in High.

## DEFENDANT'S EXHIBIT No. 107.

Received your letter and note with thanks what you say. Part of the promissory note of Mascuñana can be renewed. I received the check of 2,200 pesos, balancing the promissory note which matures to-day. I returned to you the promissory note of Menag of 350 pesos Mex. If you are going to be in the house at half-past five I will come to see you.



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## DEFENDANT'S EXHIBIT No. 109.

To all to whom these presents shall come, Be it know- that I, Francisco Martinez y Garcia, a resident of Manila, province of Manila, Philippine Islands, domiciled at number 62 Lavesares, District of Binondo, of age, married a third time and merchant by occupation, in consideration of the sum of Eight Hundred and Twenty-eight dollars to me paid by the International Banking Corporation, through its agent R. W. Brown of this City, hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may succeed him as the agent of said Banking Corporation, reserving the right of redemption on or before the thirtieth of June of the present year, a one-half interest in a parcel of land and the buildings and improvements thereon, of which I am the sole owner, said property belonging to the conjugal partnership of myself and Germana Ilustre, and being located in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A building lot and a house consisting of two separate apartments and numbered two hundred and fifty-one and two hundred and fifty three, Calle Elcano, with the corresponding kitchens and water-closets. It is bounded on the right by the house and lot of Asuncion, viuda de (name written in pencil and balance illegible), on the left by the house and lot of Ildefonso Gonzalez; on the back by another house belonging to Francisco Martinez; and on the front by Calle Elcano, the building occupying an area of one hundred and eight square meters, and being seven meters in height.

It is hereby further agreed with the said agent of the International Banking Corporation that this sale shall be of no effect if on the thirtieth of June of this year before twelve o'clock P. M. I repay to the Bank the purchase price together with all expenses which may be incurred, the said agent of the said Bank, or whoever may then represent the Bank, shall then and in such case be obliged to resell the property to me; otherwise the Bank to become the absolute owner of the same according to sections 1509 and 1518 of the Civil Code free of all liense and encumbrances, with the power to transfer the same to another person.

I also make known that the aforesaid one-half interest in the property in question shall be exempt from all liability upon the payment of the purchase price receipt of which is hereby acknowledged, even though it may be thereafter shown that it was not actually paid either in whole or in part, and I hereby waive any and all objection thereto.

I further make known that I hereby deliver the property above described to the purchaser as the owner thereof so that he may take possession of the same in accordance with section 1462 of the Civil Code. I further bind myself to guarantee to the said Bank, its agents or assigns the title to the said property which I hereby promise — defend forever against any just claims, by whomsoever brought.

In witness whereof I have signed these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

237 Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

Mr. Robert W. Brown, the agent in Manila of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney conferred upon him and which he has exhibited to the other contracting party, hereby accepts in all its parts the sale referred to in the foregoing instrument, to all of which he certified by signing these presents this third day of March, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the Municipality of Manila, Province of Manila, this third day of March, 1903, personally appeared before me Francisco Martinez y Garcia and Robert W. Brown, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLO,

*Notary Public.*

My commission expires on the first day of January, 1905.

238 Filed at 9:35 A. M. according to entry number 746, p. 231, volume 10 of the Diary.

Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K.

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## DEFENDANT'S EXHIBIT No. 110.

To all to whom these presents shall come, be it known that I, Francisco Martinez y Garcia, of Manila, Province of Manila, Philippine Islands, residing at No. 62 Lavazares, Binondo, of age, married a third time, and merchant by occupation, in consideration of the sum of Four Hundred and forty dollars, to me paid by the International Banking Corporation, through its agent R. W. Brown of this City, hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may succeed him as the agent of the said Banking Corporation, reserving the right of redemption on or before the thirtieth of June of the present year, a one-half interest in a parcel of land and the buildings and improvements thereon, of which I am the absolute owner, said property belonging to the conjugal partnership of myself and Germana Ilustre, and being located in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A building lot and a house consisting of two separate apartments and numbered 156 Calle Cabelleros, with the corresponding kitchens and water closets. It is bounded on the right by a house occupied by some Americans; on the left by the lot belonging to Ramon Rodriguez; on the back by certain property belonging to Francisco Martinez y Garcia, and in front by Calle Cabelleros, the house in question occupying an area of eighty square meters, brick and stone construction, seven meters in height, and used as a residence.

It is hereby further agreed with the said agent of the International Banking Corporation that this sale shall be of no effect if on the thirtieth of June of this year before twelve o'clock P. M. I repay to the Bank the purchase price together with all expenses which may be incurred; and the said Agent of the said Bank, whosoever may then represent the Bank shall then and in such case be obliged to resell the property to me, but should I fail so to do, the Bank will become the absolute owner of the property according to sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, with the power to transfer the same to another person.

I also make known that the aforesaid one-half interest in the property in question shall be exempt from all liability upon the payment of the purchase price, which is hereby acknowledged, even though it may be hereafter shown that it was not actually paid, in whole or in part, and I hereby waive any and all objection thereto.

I further make known that I have hereby delivered to the purchaser the above described property so that he may take possession thereof in accordance with section 1462 of the Civil Code.

I further bind myself to guarantee to the said Bank, its agents and assigns the title to the said property, which said title I hereby promise to defend forever against any just claim, by whomsoever brought.

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241 In witness whereof I have signed these presents this 28th day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

(Signed) JOSE GERVACIO GARCIA.

(Signed) GREGORIO RAMOS.

*Acceptance.*

Mr. Robert W. Brown, the agent in Manila of the International Banking Corporation, as appears from the Mercantile Register of this City, and the powers of attorney conferred upon him, and which he has exhibited to the other contracting party, hereby accepts in all its parts the sale referred to in foregoing instrument, and in witness thereof signed these presents on the third day of March, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

(Signed) JOSE GERVACIO GARCIA.

" GREGORIO RAMOS.

THE UNITED STATES OF AMERICA.

*Philippine Islands, City of Manila:*

In the municipality of Manila, Province of Manila, this third day of March, 1903, personally appeared before me Francisco Martinez y Garcia and Robert W. Brown, to me known to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

R. W. BROWN.

242 Before me:

(Signed)

VICENTE G. AZAOLA,

*Notary Public.*

My commission expires January 1st, 1905.

Filed at 9:35 this morning as per entry number 743 page 231 volume 10 of the diary.

Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

To All to Whom These Presents shall Come, Be it known that I Francisco Martinez Garcia, of Manila, province of Manila, residing at No. 62 Lavesares, District of Binondo, of age, married a third time, and a merchant by occupation, in consideration of the sum of one hundred and ninety dollars to be paid by the International

Banking Corporation through its agent, R. W. Brown of this City, hereby sell and transfer to the said R. W. Brown, as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property on or before the thirtieth of June of this year, a one-half interest in a certain parcel of land, and the buildings and improvements thereon, of which I am the absolute owner, the said property belonging to the conjugal partnership of myself and Germana Ilustre, and located in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A building lot and a house consisting of various apartments, with three front doors, numbered 158-186 Calle Caballeros, interior, with the corresponding kitchens and waterclosets. It is bounded on the right by the property of Alfonsa Gonzales, on the left by another piece of property belonging to Ramon Rodriguez, on the back by another piece of property belonging to Francisco Martinez, and in front by the aforesaid Calle Caballeros.

I further make known that I have agreed with the said agent of the International Banking Corporation, as such, that this sale shall be of no effect if on the thirtieth of June of this year, before twelve P. M., I repay to the Bank the purchase price of the property, the receipt of which I hereby acknowledge, together with all the expenses which may have been incurred, and that the Bank then and in such case, shall be obliged to resell to me; but should I fail to make such payment on the date aforesaid, the Bank shall there and then become the absolute owner thereof in accordance with section 1509 and 1518 of the Civil Code, free of all liens and encumbrances, with the power to transfer the same to another person.

I further make known that the aforesaid one-half interest in the property in question shall be exempt from all liability upon the payment of the purchase price, the receipt of which I hereby acknowledge, even though it be shown that such payment was never actually made, either in whole or in part; and I hereby waive any objection thereto.

I further make known that by virtue of these presents I have delivered to the purchaser the property hereinbefore described so that he may take possession of the same as such owner under section 1462 of the Civil Code.

I further make known that I hereby bind myself to guarantee to the Bank, its agents or assigns, the title to the said property and to defend such title against any just claim by whomsoever brought.

In testimony whereof, I sign these presents this 28th day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

Robert W. Brown, the agent in Manila of the International Banking Corporation, as appears from the Mercantile Register and from the power of attorney conferred upon him and which he has exhibited to the other contracting party, accepts in its entirety the sale referred to in the foregoing instrument.

In testimony whereof he signs these presents this third day of March, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila this third day of March, 1903, personally appeared before me Francisco Martinez y Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument, and acknowledged  
246 the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My commission expires on the first of January, 1905.

Filed at 9:35 this morning as per entry 742, page 230, volume 10 of the Diary, Manila March 9th, 1903.

[REGISTRAR'S SEAL.]

FRANCISCO ORTIGAS.

247

DEFENDANT'S EXHIBIT No. 112.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Lavazeres, District of Binondo, of age, married a third time, and by occupation a merchant, to all to whom these presents shall come, make known: That in consideration of the sum of One thousand eight hundred and ninety dollars to me paid by the International Banking Corporation, represented by R. W. Brown of this City, of age, married, I hereby transfer and sell to the said R. W. Brown as such Agent, and to whoever may succeed him as agent of the said Banking Corporation, reserving to myself the right to redeem the same on or before the thirtieth of June of this year, a one-half interest in a certain parcel of land and the buildings and improvements thereon, in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A building lot and house with four separate apartments on Calles Sevilla and San Nicolas, numbered 80 to 88, with the corresponding kitchens and waterclosets, the building being one hundred and fifty meters long by nine high, of brick and stone construction, used for residential purposes. It is bounded on the right by land belonging to Gabino Mariano, on the left by the property of Luciano Pascual, on the back by two houses belonging to the same person, and in front by Calle Sevilla and San Nicolas.

I further make known that I am the absolute owner of the said one-half interest in the house in question which belongs to the conjugal partnership between myself and my wife Germana Ilustre.

I further make known that I have agreed with the said Agent of the International Banking Corporation, as such, that this sale shall be of no effect if on or before the thirtieth of June of this year at twelve o'clock P. M., I repay to the Bank the purchase price, the receipt of which is hereby acknowledged together with all expenses which may have been incurred, and that in such case the said Agent of the aforesaid Banking Corporation shall retransfer to me the said property; but should I fail to make payment as aforesaid, the Bank will there and then become the absolute owner thereof, in accordance with section 1509 and section 1518 of the Civil Code, free from any lien or incumbrance, with the power to transfer the same to another person.

I further make known that the said one-half interest in the property in question shall be entirely released from any liability upon payment of the purchase price, the receipt of which is acknowledged, even though it be subsequently shown that no such payment was actually made either in whole or in part, and I hereby waive any objection thereto.

I further make known that by virtue of these presents I have delivered to the purchaser the property in question so that he may take possession as owner of the same in accordance with section 1452 of the Civil Code.

I likewise make known that I hereby bind myself to the said Bank to guarantee the title, to it, its agents and assigns, and to defend the same against any just claim by whomsoever brought.

In witness whereof I have signed these presents this twentieth day of February, 1903.

(Signed).

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

Robert W. Brown, the Manila agent for the International Banking Corporation, as appears from the Mercantile Register and power of attorney conferred upon me and which the other con-

tracting party has examined, do hereby accept the sale referred to in the foregoing instrument and in witness thereof, I sign these presents this third day of March, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this third day of March, 1903, personally appeared before me, Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

250 (Signed)

FRANCISCO MARTINEZ.

R. W. BROWN.

Before me:

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires on the first day of January, 1905.

Filed at 9:35 this morning as per entry 744, page 231, volume 10 of the Diary. Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

251

DEFENDANT'S EXHIBIT No. 113.

To all to whom these presents shall come: Be it known that I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at No. 62 Lavesaros of the District of Binondo, of age, married a third time, and by occupation a merchant, in consideration of the sum of One thousand seven hundred and forty dollars to me paid by the International Banking Corporation, represented by R. W. Brown, also of this City, hereby transfer to the said R. W. Brown, as such agent, and to whoever may succeed him as representative of the said Banking Corporation, subject to the right of redemption on or before the thirtieth of June of this year, a one-half interest in a certain parcel of land and the buildings and improvements thereon, of which I am the absolute owner, it belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A piece of urban property consisting of a lot and a house built thereon with three doors on Calle Barcelona, Numbers 79 to 83, with two waterclosets, bath, kitchen, back yard and verandah and three lower rooms, covering an area of three hundred and eighty-



five square meters by six meters in heighth. It is bounded on the right by the lot belonging to Candelaria Alonso and on the left by the lot of Genaro Tuason; on the front by Calle Barce-  
252 lona. It is built of of brick and stone and used for residential purposes.

I further make known that I have covenanted and agreed with the said Agent of the International Banking Corporation, as such, that this sale shall be of no effect whatever, if on the thirtieth of June of this year, before twelve o'clock P. M., I repay the purchase price received by me and whatever expenses may have been incurred, and that the said agent or whoever may then represent the said Banking Corporation shall retransfer to me the property in question upon my making such payment; otherwise, should I fail to make such payment, the Bank shall there and then become the absolute owner thereof under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, the Bank being empowered to transfer the said property to third parties.

I likewise make known that the aforesaid one-half interest in the property in question shall be free from all liens and encumbrances by virtue of the payment of the purchase price, which I hereby acknowledge, even though it may be subsequently shown that no such payment was actually made, either in whole or in part, and I hereby waive any objection thereto.

I further make known that by virtue of these presents the property in question is delivered to the purchaser so that as owner of the same he may take possession of it in accordance with section number 1462 of the Civil Code.

253 I further make known that I hereby obligate myself to guarantee to the said Bank, its representatives and assigns the title to the said property, which I promise to defend forever against all just claims by whomsoever brought.

In witness whereof, I have signed these presents this 28th day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, The Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of Attorney conferred upon me and which the other contracting party has previously examined, do hereby accept the foregoing sale in its entirety, and in witness whereof I sign these presents this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twenty eighth day of February, 1903, personally appeared before me Francisco Martinez y Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument, and  
 254 acknowledged and ratified the same as their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.  
 R. W. BROWN.

Before me:

[NOTARY'S SEAL.]

VICENTE G. AZAOLA,  
*Notary Public.*

My Commission expires January 1, 1905.

Filed at 9:35 A. M., as appears from entry number 745, page 231 volume 10, of the Diary.

Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

255

DEFENDANT'S EXHIBIT No. 114.

To all to whom these presents shall come, Be it known that I Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at number 62 Lavesares in the District of Binondo, of age, married a third time, and a merchant by occupation, in consideration of the sum of Eight hundred and sixty dollars to me paid by the International Banking Corporation, represented by R. W. Brown of this City, do hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Corporation, reserving to myself the right to repurchase the same on or before the thirtieth of June of this year, a one-half interest in a certain parcel of land, and the buildings and improvements thereon, of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, said property being situated in the municipality of Manila, province of Manila, Philippine Islands described in metes and bounds as follows:

A lot and the building thereon on Calle Lara, numbered 97 and 99, the said house consisting of one room, a kitchen, verandah and watercloset, covering an area of two hundred and seven square meters the property being bounded on the right by the lot of Francisco Martinez; on the left by another lot belonging to Joaquin Acuesta; on the back by Calle San Nicolas and the lot of Camila Santos; and in front by Calle Lara. The building is seven meters  
 256 high, of brick and stone construction and is used for residential purposes.

I further make known that it is hereby covenanted and agreed with the agent of the International Banking Corporation, as such, that this sale and transfer shall be of no effect whatever if, on or before the thirtieth of June of this year, before twelve o'clock P. M., I repay to the Bank the purchase price received by me and such expenses as may have been incurred, the said agent, or whoever may represent the Bank at the time, binding himself to retransfer the property to me, but should I fail to repay the said amount as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, being empowered to transfer the same to any other party.

I further make known that the said one-half interest is free of all liability by reason of the payment of the purchase price, the receipt of which I hereby acknowledge, even though it may be hereafter shown that such payment was never actually made either in whole or in part; and I hereby waive any objection or claim which I may have thereunder.

I further make known that by virtue of these presents I have delivered to the purchaser the above described property so that as such owner he may take possession of the same under section 1462 of the Civil Code.

I further make known that I am responsible to the Bank, its representatives or assigns, for the title to the said property, which  
257 I hereby promise to defend forever against all just claims, by whomsoever brought.

In testimony whereof I have signed these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

(Signed) JOSE GERVACIO GARCIA.  
" GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation as appears from the Mercantile Register of this City, and the power of attorney which I have exhibited to the other contracting party, of age, married and a resident of Manila, and a merchant by occupation, do hereby accept the foregoing sale and transfer, and in testimony thereof, I subscribe these presents in Manila, this twenty-eight day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

(Signed) JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, Province of Manila, this second day of March, 1903, personally appeared before me Francis  
 258 Martinez and Robert W. Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

Notary Public.

My commission expires January 1, 1905.

Filed at three o'clock this afternoon as per entry number 74 page 232, volume 10 of the Diary.

Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

259

DEFENDANT'S EXHIBIT No. 115.

To all to whom these presents shall come, Be it known, that Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Lavesares, District of Binondo, of age, married a third time, and by occupation a merchant, in consideration of the sum of Nine hundred and ninety dollars to me paid by the International Banking Corporation, represented by R. W. Brown, also of this City, do hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself, however, the right to redeem the property on or before the thirtieth of June of this year a one-half interest in a certain tract of land and the buildings and improvements thereon, of which I am the absolute owner, the said property belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, which said property is located in the City of Manila, province of Manila, Philippine Islands, and described by metes and bounds as follows:

Urban Property.—A lot consisting of six hundred and ninety-eight square meters, of which four hundred and ninety-eight are occupied by a house, with two separate apartments, number 10 Calle Sevilla, interior, district of San Nicolas Binondo, with the corresponding rooms, kitchens, yard, water-closets. It is bounded on the right by the land belonging to Francisco Martinez, on the left by land belonging to Emilia Fajardo; on the back by land belonging to Gregorio Ortuzo; and in front by the house and lot belonging to Gregorio Legaspi.

260

I further make known that I have covenanted and agreed with the said Agent of the International Bank, as such, that this sale shall be of no effect if on the thirtieth of June of this year, before twelve o'clock P. M., I repay to the Bank the purchase price which I have received, together with all the expenses which may have been incurred and in such case, the said Agent, or whosoever may represent the Bank at the time, shall be obliged to retransfer the property to me; but should I fail to make repayment as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that the aforesaid one-half interest is released from all liability by reason of the payment of the purchase price, the receipt of which I acknowledge, even though it may be proved hereafter that such payment was never actually made either in whole or in part, and I hereby expressly waive any objection or claim which I may have thereunder.

I further make known that by virtue of these presents I have delivered to the purchaser the above described property to the  
261 end that as such owner he take possession of the same under section 1462 of the Civil Code.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property, which I hereby promise to defend forever against all just claims, by whomsoever brought.

In testimony whereof, I have signed these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney which I have exhibited to the other contracting party, of age, married, and a resident of this City, being a merchant by occupation, do hereby accept in its entirety the sale referred to in the foregoing instrument, and in testimony thereof I sign these presents in Manila, this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, Province of Manila, this second day of March, 1903, personally appeared before me Francisco  
 258 Martinez and Robert W. Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

Notary Public.

My commission expires January 1, 1905.

Filed at three o'clock this afternoon as per entry number 74 page 232, volume 10 of the Diary.

Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

To all to whom these presents shall come, Be it known, that Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Lavesares, District of Binondo, of age married a third time, and by occupation a merchant, in consideration of the sum of Nine hundred and ninety dollars to me paid by the International Banking Corporation, represented by R. W. Brown, also of this City, do hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself, however, the right to redeem the property on or before the thirtieth of June of this year a one-half interest in a certain tract of land and the buildings and improvements thereon, of which I am the absolute owner, the said property belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, which said property is located in the City of Manila, province of Manila, Philippine Islands, and described by metes and bounds as follows:

Urban Property.—A lot consisting of six hundred and ninety-eight square meters, of which four hundred and ninety-eight are occupied by a house, with two separate apartments, number 1 Calle Sevilla, interior, district of San Nicolas Binondo, with the corresponding rooms, kitchens, yard, water-closets. It is bounded

260 the right by the land belonging to Francisco Martinez, the left by land belonging to Emilia Fajardo; on the back by land belonging to Gregorio Ortuzo; and in front by house and lot belonging to Gregorio Legaspi.

I further make known that I have covenanted and agreed with the said Agent of the International Bank, as such, that this sale shall be of no effect if on the thirtieth of June of this year, before twelve o'clock P. M., I repay to the Bank the purchase price which I have received, together with all the expenses which may have been incurred and in such case, the said Agent, or whosoever may represent the Bank at the time, shall be obliged to retransfer the property to me; but should I fail to make repayment as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that the aforesaid one-half interest is released from all liability by reason of the payment of the purchase price, the receipt of which I acknowledge, even though it may be proved hereafter that such payment was never actually made either in whole or in part, and I hereby expressly waive any objection or claim which I may have thereunder.

I further make known that by virtue of these presents I have delivered to the purchaser the above described property to the  
261 end that as such owner he take possession of the same under section 1462 of the Civil Code.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property, which I hereby promise to defend forever against all just claims, by whomsoever brought.

In testimony whereof, I have signed these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney which I have exhibited to the other contracting party, of age, married, and a resident of this City, being a merchant by occupation, do hereby accept in its entirety the sale referred to in the foregoing instrument, and in testimony thereof I sign these presents in Manila, this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
262 *Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this second day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1905.

Filed at three o'clock this afternoon as per entry 749, page 232, volume 10 of the Diary. Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

263

DEFENDANT'S EXHIBIT No. 116.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Lavazares, district of Binondo, of age, married a third time, a merchant by occupation, To all to whom these presents shall come, Make known, that in consideration of the sum of One thousand and fifty dollars, to me paid by the International Corporation, represented by R. W. Brown, of this City, of age, married, and a merchant by occupation, and the agent for the aforesaid Bank, hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property on or before the thirtieth of June of this year, a one-half interest in a certain tract of land, and the buildings and improvements thereon, of which I am the sole owner, the same belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, located in the municipality of Manila, province of Manila, the metes and bounds of which are described as follows:

Urban Property.—A house consisting of three separate apartments, with three doors, situated on Calle Lara, district of Tondo and number- 101, 103 and 105, covering an area of three hundred and three square meters, of brick and stone construction and used for residential purposes. It is bounded on the right by the house  
264 of Isabelo Reyes; on the left by another house belonging to Francisco Martinez; on the back by another house belonging to Luciano Mariano, and on the front by the said Calle Lara.

I further make known that I have *convenanted* and agreed with the said agent of the International Banking Corporation, in his



capacity as such, that this sale shall be of no effect provided that on the thirtieth of June of this year, before twelve o'clock, P. M. I repay to the Bank the purchase price and such expenses as may have been incurred, and in such case, the said Agent or whoever may represent the Bank at the time shall be obliged to retransfer the property to me; but should I fail to make such payment as aforesaid, the Bank shall there and then become the absolute owner thereof under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances and may transfer the same to another.

I further make known that the aforesaid property is released from all liability by reason of the payment of the purchase price, the receipt of which I hereby acknowledge, even though it may be shown hereafter that such payment was never actually made, either in whole or in part, hereby waiving any objection or claim which I may have thereunder.

I further make known that by virtue of these presents the above described property is delivered to the purchaser to the end that as owner of the same he may take possession of it in accordance with section 1462 of the Civil Code.

265 I further make known that I am responsible to the said Bank, its representatives and assigns, for the title to the said property, which I hereby guarantee and promise to defend forever against all just claims, by whomsoever brought.

In testimony whereof, I have signed these presents this twenty-eighth day of January, 1903.

(Signed)

FRANCISCO MARTINEZ.

In the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney which I hereby exhibit to the other contracting party, of age, married, a resident of Manila, and a merchant by occupation, do hereby accept in all its parts the sale referred to in the foregoing instrument, and in testimony thereof I sign these presents in Manila, this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

In the Presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this  
266 second day of March, 1903, personally appeared before me Francisco Martinez y Garcia and Robert W. Brown, known

to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1905.

Filed at three o'clock this afternoon, as per entry 748, page 232, volume 10 of the Diary. Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

To all to whom these presents shall come, Be it known that I, Francisco Martinez y Garcia of Manila, province of Manila, Philippine Islands, residing at 62 Lavezares, District of Binondo, of age, married a third time, and a merchant by occupation, in consideration of the sum of One thousand two hundred dollars to me paid by the International Banking Corporation, through its Agent, R. W. Brown of this City, do hereby sell and transfer to the said R. W. Brown, as such agent, or to whosoever may succeed him as representative of the said Banking Corporation, reserving to myself the right to redeem the same on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon, of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my first wife, Germana Ilustre, deceased, and located in the municipality of Manila, province of Manila, Philippine Islands, the metes and bounds of which said property are as follows:

A tract of land with an area of one hundred and eighty-two square meters, of which one hundred and eighty are occupied by a house having three separate apartments on Calle Sevilla, numbered 94, 96 and 98, with their respective kitchens, and water-closets, of stone and brick construction, and having an elevation of five and one-half meters. It is bounded on the right by the house and lot of Sabas Doroteo; on the left by the house of Francisco Martinez, and on the back by the house of Gregorio Ortuzte, and in front 268 by another house and lot belonging to Francisco Martinez and Calle Sevilla.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation, as such, that this sale shall be of no effect provided on the thirtieth of June of this year, before 12 o'clock, P. M., I repay to the Bank the pur-

chase price received by me and such expenses as may have been incurred, and in such case the said agent of the said Banking Corporation shall be obliged to retransfer the property to me, but should I fail to make such payment, the Bank will there and then become the absolute owner of the same under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances and may transfer the same to another.

I further make known that the said one-half interest in the property in question is released from any responsibility by reason of the payment of the price the receipt of which I acknowledge, even though it may be proved hereafter that no such payment was ever actually made, and I hereby waive any objection or claim thereunder.

I further make known that by virtue of these presents there has been delivered to the purchaser the above described property so that as the owner of the same he may take possession of it in accordance with section number 1462 of the Civil Code.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property, which I hereby undertake to defend forever against all just claims, by whomsoever brought.

269 In witness whereof, I sign these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney which I have exhibited to the other contracting party, of age, married, and a resident of Manila, and a merchant by occupation, do hereby accept in all its parts the sale referred to in the above instrument, and in testimony thereof, I sign these presents in Manila, this twenty-eighth day of November, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, City of Manila, this second day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who

executed the foregoing instrument, and acknowledged the same to be their own free act and deed.

270 (Signed) FRANCISCO MARTINEZ.  
(Signed) R. W. BROWN.

Before me:

[NOTARY'S SEAL.]

VICENTE G. AZAOLA.

*Notary Public.*

My Commission expires January 1, 1905.

Filed at three o'clock this afternoon as per entry number 750, page 233, volume 10 of the Diary, Manila, March 9th, 1903.

(Signed) FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

271

DEFENDANT'S EXHIBIT No. 118.

To all to whom these presents shall come, Be it known that I Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at number 62 Lavazeres, District of Binondo, of age, married a third time, and by occupation a merchant, in consideration of the sum of Two thousand dollars to me paid by the International Banking Corporation, through its agent R. W. Brown, of this City, hereby sell and transfer to the said R. W. Brown, as such agent, or to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the same on or before the thirtieth of June of this year, a one-half interest in certain tract of land, and the buildings and improvements thereon of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my first wife, Germana Ilustrado, deceased, the said land being located in the municipality of Manila, province of Manila, Philippine Islands, the metes and bounds of which are as follows:

Urban Property: A house having five doors on Calle Lavazeres numbered 68 to 76, of Brick and stone construction, with an elevation of seven meters, being bounded on the right with a house and lot belonging to Francisco Martinez; on the left by land belonging to Gregorio Legaspi and the said Martinez, on the back by land belonging to Gregorio Ortuzte, and in front by the said Calle Lavesares and a certain piece of property belonging to Luciana Dina.

272

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such, that this sale shall be of no effect, provided on the thirtieth of June of this year, before 12 o'clock P. M., I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent of the said Banking Corporation shall be obliged to transfer the property to me, but should fail to make such payment, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the

Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that the said one-half interest in the property in question is released from any liability by reason of the payment of the price, the receipt of which I acknowledge, even though it may be proved hereafter that no such payment was ever actually made, and I hereby waive any objection or claim thereunder.

I further make known that by virtue of these presents there has been delivered to the purchaser the above described property so that as the owner of the same he may take possession in accordance with section number 1462 of the Civil Code.

I further make known that I am responsible to the said Bank, its representative and assigns for the title to the said property, which I hereby promise to defend forever against all just claims, by whomsoever brought.

273 In witness whereof, I sign these presents, this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this City and the power of attorney which I have exhibited to the other contracting party, of age, married, and a resident of Manila, and by occupation a merchant, do hereby accept, in all its parts the sale referred to in the above instrument, and in testimony thereof I sign these presents in Manila, this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In this municipality of Manila, province of Manila, this second day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their own free act and deed.

274 (Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

[NOTARY'S SEAL.]

VICENTE G. AZAOLA.

*Notary Public.*

My Commission expires January 1st, 1905.

Filed at three o'clock this afternoon as per entry number 752, p. 233, volume 10 of the Diary. Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS

[REGISTRAR'S SEAL.]

Indorsed: "July 8, '04. H. D. G. V. G. T. C. K."

275

DEFENDANT'S EXHIBIT No. 119.

To all to whom these presents shall come, Be it known that Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at number 62 Lavezares, District of Binondo, of age, married a third time, and a merchant by occupation, in consideration of the sum of seven hundred and sixty dollars to me paid by the International Banking Corporation, through its agent, R. Brown of this City, hereby sell and transfer to the said R. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself, however, the right to redeem the property thus transferred on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon, of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, a being located in the municipality of Manila, province of Manila, Philippine Islands, and the metes and bounds of which are as follows:

Urban Property. A lot with an area of ninety-nine square meters of which ninety-eight are occupied by a house with two doors on Calle Barcelona, numbered 115 and 117 of the District of San Nicolas, Binondo. It is of brick and stone construction, having an elevation of seven meters. It is bounded on the right by the house and lot of Gregorio Legaspi; on the left by the lot of Gregorio Ortuzte; on the back by lands belonging to Francisco Martinez, and in front by Calle Barcelona and certain lands belonging to Luis Yango.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation, as such, that this sale shall be of no effect provided that on the thirtieth of June of the same year, before 12 o'clock P. M., I repay to the Bank the purchase price received by me, and such expenses as may have been incurred, in which case the said agent of the said Banking Corporation shall be obliged to retransfer the property to me; but should I fail to make payment as aforesaid, the Bank will then and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and incumbrances and may transfer the same to another.

I further make known that the said one-half interest of the property in question is released from any liability by reason of the payment of the purchase price the receipt of which I acknowledge, whether it be proved hereafter that no such payment was ever acted

ally made or not, and I hereby waive any objection or claim thereunder.

I further make known that by virtue of these presents there has been delivered to the purchaser the above described property so that as the owner thereof he may take possession in accordance with section 1462 of the Civil Code.

I further make known that I am responsible to the said  
277 Bank, its representatives and assigns for the title to the said property, which I hereby promise to defend forever against all just claims, by whomsoever brought.

In witness whereof, I sign these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila Agent of the International Banking Corporation, as appears from the mercantile register of this city and the power of attorney which I have exhibited to the other contracting party, of age, married and a resident of Manila, and by occupation a merchant, do hereby accept, in all its parts, the sale referred to in the above instrument, and in testimony thereof, I sign these presents in Manila this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

278 In the municipality of Manila, province of Manila, this second day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

VICENTE G. AZAOLA,  
*Notary Public.*

[NOTARY'S SEAL.]

My Commission expires January 1st, 1905.

Filed at three o'clock this afternoon as per entry number 75 page 233, volume 10 of the Diary. Manila, March 9th, 1903.

[REGISTRAR'S SEAL.]

(Signed)

FRANCISCO ORTIGAS.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

279

DEFENDANT'S EXHIBIT No. 120.

To all to whom these presents shall come, Be it known that Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Lavezares, District of Binondo, of age married and third time, and a merchant by occupation, in consideration of the sum of Six hundred and fifty dollars to me paid by the International Banking Corporation, represented by R. V. Brown of this City, hereby sell and transfer to the said R. V. Brown, as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself however, the right to redeem the property thus sold, on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and its buildings and improvements thereon, of which I am the absolute owner, the same belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, the said property being located in the municipality of Manila, province of Manila, Philippine Islands, the metes and bounds of the same being as follows:

Urban Property. A lot and the house built thereon covering an area of fifty-five square meters, with an elevation of eight meters of brick and stone construction, numbered sixty-six Lavezares, District of San Nicolas. It is bounded on the right by the house and lot of Juan Rodriguez; on the left by lands belonging to Francisco Martinez and in front by Calle Lavezares and lands belonging to Francisco Rodriguez.

280 I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation, as such, that this sale shall be of no effect, provided that on the thirtieth of June of the same year, before twelve o'clock, P. M., repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent, the said Banking Corporation shall be obliged to retransfer the property to me; but should I fail to make payment as aforesaid, the Bank will there and then become the absolute owner of the property, under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that the said one-half interest of the property in question is released from any liability by reason of the payment of the purchase price the receipt of which I acknowledged whether it is proved or not hereafter that no such payment was ever actually made, and I hereby waive any objection or claim thereunder.

I further make known that by virtue of these presents there h



been delivered to the purchaser the above described property so that as the owner thereof he may take possession in accordance with section 1462 of the Civil Code.

I further make known that I am responsible to the said Bank, its representatives or assigns, for the title to the said property, which I hereby promise to defend forever against all just claims, by whomsoever brought.

In witness whereof, I sign these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, Manila Agent of the International Banking Corporation, as appears from the Mercantile Register of this city and the power of attorney which I have exhibited to the other contracting party, of age, married and a resident of Manila, and by occupation a merchant, do hereby accept, in all its parts, the sale referred to in the above instrument, and in testimony thereof, I sign these presents in Manila, this twenty-eighth day of February, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this second day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert W. Brown, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

VICENTE G. AZAOLA,

282 [NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1st, 1905.

Filed at three o'clock this afternoon as per entry number 753, page 233, volume 10 of the Diary. Manila, March 9th, 1903.

(Signed)

FRANCISCO ORTIGAS.

[REGISTRAR'S SEAL.]

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of Eight hundred and twenty-eight dollars, to me paid by the International Banking Corporation, through its agent, R. W. Brown of this City, by the presents make known that I have sold and transferred to the said R. W. Brown, as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of the same year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, the metes and bounds of which are as follows:

A lot and the house built thereon on Calle Elcano, numbered 252 and 253, with kitchens and water-closets, the same being bounded on the right by the house and lot of —; on the left by the house and lot of Ildefonso Gonzales; on the back *the* another house belonging to Francisco Martinez; and in front by Calle Elcano, the structure covering an area of one hundred and eight square meters and having an elevation of seven meters.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect if on or before the thirtieth of June of this year, before twelve o'clock P. M., I repay to the Bank

the purchase price received by me and such expenses as may have been incurred, in which case, the said Agent or whosoever may represent the Bank at the time, shall be obliged to reconvey to me the property; but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner of the same, under sections 1509 and 1518 of the Civil Code, free of any liens or encumbrances, and may transfer the said property to another.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property, which I hereby promise to defend forever against all just claims by whomsoever brought. Manila, February twenty-seventh, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS,  
MARTIN SANDOVAL.

THE UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twentieth day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed

the foregoing instrument, and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1st, 1905.

285 Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

DEFENDANT'S EXHIBIT No. 122.

I, Francisco Martinez y Garcia, a resident of Manila, province of Manila, Philippine Islands, in consideration of the sum of Four hundred and forty dollars to me paid by the International Banking Corporation, through its agent, R. W. Brown of this City, do hereby make known that I have sold and transferred to the said R. W. Brown, as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A lot and a house with two doors on Calle Cabelleros, number 156, with kitchens and water-closets; bounded on the right by a house occupied by Americans; on the left by land belonging to Ramon Rodriguez; on the back by another house belonging to Francisco Martinez and in front by Calle Cabelleros. The building covers an area of eighty square meters, and has an elevation of seven meters. It is of brick and stone construction and is used for residential purposes.

286 I further make known that I have *convenanted* and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect, if on or before 12 o'clock P. M. of the thirtieth of June of this year, I repay to the Bank the purchase price received by me and such expenses as may have been incurred, the said agent, or whoever may represent the Bank at the time shall in such case be obliged to reconvey the property to me; but should I fail to make such payment as aforesaid, the Bank will there and then become the absolute owner of the property under section- 1509 and 1518 of the Civil Code, free of all liens and encumbrances and may transfer the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns, for the title to the said property which I hereby promise to defend forever against any claim by whomsoever brought. Manila, February 27th, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

THE UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the City of Manila, province of Manila, this twenty-eighth of February, 1903, personally appeared before me, Francisco Martinez y Garcia, known to me to be the person who executed foregoing instrument and acknowledged the same to be  
 287 own free act and deed.

(Signed)

FRANCISCO MARTINEZ

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

Notary Public

My Commission expires January 1, 1905.

DEFENDANT'S EXHIBIT No. 123.

I, Francisco Martinez, y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of One hundred and ninety dollars to me paid by the International Corporation through its agent R. W. Brown of this City, do hereby make known that I have sold and transferred to the said R. W. Brown as such agent and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property sold, on or before the thirtieth of June of this year a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, described as follows:

A lot and a house, with three doors, numbered 158-186 Calle Cabelleros, with its kitchens and water-closets. It is bounded on the right by land belonging to Alfonso Gonzales; on the left  
 288 another house belonging to Ramon Rodriguez; on the back by another house belonging to Francisco Martinez and on the front by the said Calle Cabelleros.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect if on or before 12 o'clock P. M., of the thirtieth of June of this year, I repay to the Bank the purchase price received by me and such expense as may have been incurred in which case the said agent or whosoever may represent the Bank at the time shall be obliged to reconvey the property to me; should I fail to make payment as aforesaid, the Bank shall thereupon become the absolute owner of the property under sections 1517 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the said Bank and its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend forever against

just claims, by whomsoever brought. Manila, February twenty-seventh, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free act and deed.

289

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

[NOTARY'S SEAL.]

VICENTE G. AZAOLA,

*Notary Public.*

My Commission expires January 1, 1905.

#### DEFENDANT'S EXHIBIT No. 123-1.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of One thousand eight hundred and ninety dollars to me paid by the International Banking Corporation, through its agent, R. W. Brown of this City, make known that I hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this Year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

A lot and the house thereon on Calles Sevilla and San Nicolas, number 82 to 88, with its kitchens and water closets. The building covers an area of one hundred and fifty square meters and has an elevation of nine meters and is of brick and stone construction, used for residential purposes. It is bounded on the right by land belonging to Gabino Mariano; on the left by the land of Luciana Pascual; on the back by two houses belonging to the aforesaid parties; and in front by Calles Sevilla and San Nicolas.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect, provided that on or before 12 o'clock P. M. of June thirtieth of this year I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent of whosoever may represent the Bank

at the time shall be obliged to reconvey the property to me; but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner of the property under sections 1506 and 1518 of the Civil Code, free of all liens and encumbrances and may sell the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend against any just claims by whomsoever brought. Manila, February 27, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila this 291 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1908.

#### DEFENDANT'S EXHIBIT No. 123-2.

I, Francisco Martinez y Garcia, of Manila, province of Manila Philippine Islands, in consideration of the sum of One thousand seven hundred and forty dollars to be paid by the International Banking Corporation through its agent R. W. Brown of this City do hereby make known that I have sold and transferred to the said R. W. Brown as such agent, or to whosoever may hereafter represent the said Bank, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, Philippine Islands described as follows:

292 A lot and a house with three doors on Calle Barcelona number 79 to 83, with two water-closets, bath, kitchen, back yard, verandah, and three rooms on the first floor, covering an area of three hundred and eighty-five square meters and having an elevation of six meters. It is bounded on the right by the lot of Candellaria Alonso; on the left by another lot belonging to Genaro Tuason; and in front by Calle Barcelona. The house is of brick and stone construction, and is used for residential purposes.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect provided that on or before twelve o'clock P. M. June thirtieth of this year, I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent, or whosoever may represent the Bank at the time shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free from all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend against all just claims, by whomsoever brought.

Manila, February 27, 1903.

293 (Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twenty-eighth day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1905.

#### DEFENDANT'S EXHIBIT No. 123-3.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of Eight hundred and sixty-dollars to me paid by the International Banking Corporation through its agent R. W. Brown of this City, hereby make known that I have sold and transferred to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Bank, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the city of Manila, province of Manila, Philippine Islands, described as follows:

294

A lot and house on Calle Lara, numbered 97-99, the house consisting of one room, kitchen, verandah, and water-closet and having a superficial area of two hundred and seven square meters. It is bounded on the right by another house belonging to Francisco Martinez; on the left by the house of Joaquin Acuesta; on the back by Calle San Nicolas, and land belonging to Camila Santos; and in front by Calle Lara. The house has an elevation of seven meters and is of brick and stone construction, being used for residential purposes.

I further make known that I have covenanted and agreed with the said agents of the International Bank as such that this sale shall be of no effect provided that on or before twelve o'clock P. M. of June thirtieth of this year I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent or whosoever may represent the bank at the time shall be obliged to reconvey the property to me; but should I fail to make such payment, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the Bank.  
295 its representatives and assigns for the title to the said property, which I hereby guarantee and promise to defend against any just claim by whomsoever brought.

Manila, February 28, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

[NOTARY'S SEAL.]

VICENTE G. AZAOLA,

*Notary Public.*

My Commission expires January 1, 1905.

DEFENDANT'S EXHIBIT No. 123-4.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of One thousand and fifty dollars, to me paid by the International Banking Corpo-



96 ration, represented by R. W. Brown of this City, do hereby make known that I have sold and transferred to the said R. W. Brown, as such Agent, and to whosoever may hereafter represent the said Bank, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

Urban Property. Consisting of a house with three doors on Calle Lara, District of Tondo, numbered 101, 103 and 105, covering a superficial area of three hundred and three square meters, of brick and stone construction, and used for residential purposes. It is bounded on the right by a house belonging to Isabelo Reyes, on the left by another house belonging to Francisco Martinez, and in back by another house belonging to Luciano Mariano, and in front by said Calle Lara.

I further make known that I have covenanted and agreed with the agent of the said International Banking Corporation as such that this sale shall be of no effect if, on the thirtieth of June of the same year, on or before twelve o'clock, P. M., I repay to the Bank the purchase price received by me and such expenses as may be incurred, in which case the said agent, or whosoever may represent the Bank at the time shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner of the property, under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns, for the title to the said property, which I hereby guarantee and promise to defend against all just claims, by whomsoever brought.

Manila, February 28, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, Province of Manila, this 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

Notary Public.

My Commission expires January 1, 1905.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of Nine hundred and ninety dollars to me paid by the International Banking Corporation, through its agent R. W. Brown of this City, do hereby make known that I have sold and transferred to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land, and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

Urban Property. A lot comprising six hundred and ninety-eight square meters, of which four hundred and ninety-eight are occupied by a house in the interior of Calle Sevilla number 100, District of San Nicolas Binondo, with its corresponding rooms, kitchen, yard and water-closets. The property is bounded on the right by lands of Francisco Martinez, on the left by lands belonging to Emilia Fajardo, and on the back by another piece of land belonging to Gregorio Ortuoze, and in front by the house and lot of Gregorio Legaspi.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such, that this sale shall be of no effect provided that on or before twelve o'clock P. M. of June thirtieth of the said year I repay to the Bank the purchase price received by me and such expenses as may have been incurred, and in such case the said agent, or whosoever may represent the Bank at the time shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the said Bank its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend against any just claims by whomsoever brought.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.  
MARTIN SANDOVAL.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this twenty-eighth day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed

the foregoing instrument and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

300 My Commission expires January 1, 1905.

DEFENDANT'S EXHIBIT No. 123-6.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of One thousand two hundred dollars to me paid by the International Banking Corporation through its agent R. W. Brown of this City, do make known that I hereby sell and transfer to the said R. W. Brown as such agent, and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain parcel of land and the buildings and improvements thereon, in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

Urban Property: A lot with a superficial area of one hundred and eighty-two square meters of which one hundred and eighty are occupied by a house consisting of three separate apartments on Calle Sevilla numbered 94, 96 and 98, with their corresponding kitchens and water-closets, of brick and stone construction, the house having an elevation of five and one-half meters. The property is bounded on the right by the house and lot of Sabas Doroteo, on the left by the house of Francisco Martinez, on the back by the house of Gregorio Ortuoze, and in front by the house and lot of Francisco Martinez, and the aforesaid Calle Sevilla.

301 I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such, that this sale shall be of no effect provided that on or before twelve o'clock P. M. of June thirtieth of this year I repay to the Bank the purchase price received by me and all the expenses which may have been incurred, in which case the said agent or whosoever may represent the Bank at that time shall be obliged to reconvey the property to me; but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances and may sell the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend against any just claims, by whosoever brought.

(Signed)

FRANCISCO MARTINEZ.

In the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me, Francisco Martinez, known to me to be the person who executed the foregoing instrument and acknowledged the same to be *how own*  
 302 free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1905.

DEFENDANT'S EXHIBIT No. 123-7.

I, Francisco Martinez, y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of Seven hundred and sixty dollars to me paid by the International Banking Corporation through its agent R. W. Brown of this City, make known that I hereby sell and transfer to the said R. W. Brown as such agent and to whosoever may hereafter represent the said Banking Corporation, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

Urban Property. A tract of land having a superficial area of ninety-nine square meters, of which ninety-eight square meters are occupied by a house with two front doors, numbered 115 and 117  
 303 Calle Barcelona, District of San Nicolas, Binondo, of brick and stone construction and having an elevation of seven meters. It is bounded on the right by the house and lot of Gregorio Legaspi; on the left by the house of Gregorio Ortuzte, on the back by another house belonging to Francisco Martinez, and in front by the said Calle Barcelona and lands belonging to Luis Yangeo.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation, as such, that this sale shall be of no effect provided that on the thirtieth of June of this year, before twelve o'clock P. M. I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent, or whosoever may represent the Bank at the time shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property,

which I hereby guarantee and promise to defend forever against all just claims by whomsoever brought.

In testimony whereof, I sign these presents this 28 day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

304 In the presence of:  
GREGORIO RAMOS.  
MARTIN SANDOVAL.

UNITED STATES OF AMERICA,  
*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

*Notary Public.*

[NOTARY'S SEAL.]

My Commission expires, January 1, 1905.

#### DEFENDANT'S EXHIBIT No. 123-8.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of Two Thousand dollars to me paid by the International Banking Corporation, through its agent R. W. Brown of this City, make known that I hereby sell and transfer to the said R. W. Brown as such agent and to whoever may hereafter represent the Bank, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of this year, a one-half interest in a certain tract of land and the  
305 buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

Urban Property.—A house having five front doors on Calle Lavezares numbered 68 to 76, of brick and stone construction, with an elevation of seven meters, which is bounded on the right by a house and lot belonging to Francisco Martinez; on the left by land belonging to Gregorio Legaspi and the said Martinez, on the back by land belonging to Gregorio Ortuoze, and in front by said Calle Lavezares and the lands of Luciano Dina.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect provided that on or before twelve o'clock of June thirtieth of this year I pay to the Bank the purchase price received by me and such expenses as may have been incurred,

in which case the said agent, or whosoever may then represent the Bank shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank will there and then become the absolute owner of the property under sections 1509 and 1518 of the Civil Code, free of any lien or encumbrance, and may transfer the same to another.

I further make known that I am responsible to the Bank its representatives and assigns for the title to the said property, which I hereby guarantee and promise to defend forever against all just claims by whomsoever brought.

306 In testimony whereof I have signed these presents this twenty-eighth day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

In the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila this 28 day of February, 1903, personally appeared before me Francisco Martinez y Garcia, known to me to be the person who executed the foregoing instrument and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

[NOTARY'S SEAL.]

VICENTE G. AZAOLA,

*Notary Public.*

My Commission expires January 1, 1905.

#### DEFENDANT'S EXHIBIT No. 123-9.

I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, in consideration of the sum of six hundred and fifty dollars to me paid by the International Banking Corporation, through its agent R. W. Brown of this City make known that I hereby sell and transfer to the said R. W. Brown as such agent, and to whoever may hereafter represent the said Bank, reserving to myself the right to redeem the property thus sold on or before the thirtieth of June of the same year, a one-half interest in a certain tract of land and the buildings and improvements thereon in the municipality of Manila, province of Manila, Philippine Islands, described as follows:

307 Urban Property.—A house and lot having a superficial area of fifty-five square meters, with an elevation of eight meters for the house which is of brick and stone construction, numbered sixty-six Lavazares, District of San Nicolas. It is bounded on the right by the lot

of Juan Rodriguez; on the left by another property belonging to Francisco Martinez; on the back by another piece of property belonging to the said Martinez, and in front by Calle Lavezares, and the lands of Francisco Rodriguez.

I further make known that I have covenanted and agreed with the said agent of the International Banking Corporation as such that this sale shall be of no effect provided that on or before twelve o'clock of June thirtieth of this year I repay to the Bank the purchase price received by me and such expenses as may have been incurred, in which case the said agent or whoever may represent the Bank at the time shall be obliged to reconvey the property to me, but should I fail to make payment as aforesaid, the Bank shall there and then become the absolute owner thereof under sections 1509 and 1518 of the Civil Code, free of all liens and encumbrances, and may transfer the same to another.

308 I further make known that I am responsible to the said Bank, its representatives and assigns for the title to the said property which I hereby guarantee and promise to defend against all just claims, by whomsoever brought.

In testimony whereof, I sign these presents in Manila this 28 day of February, 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

GREGORIO RAMOS.

MARTIN SANDOVAL.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this 28 day of February, 1903, personally appeared before me Francisco Martinez, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

Before me:

(Signed)

VICENTE G. AZAOLA,

*Notary Public.*

[NOTARY'S SEAL.]

My Commission expires January 1, 1905.

#### DEFENDANT'S EXHIBIT No. 123-10.

To all to whom these presents shall come, be it known that I, Francisco Martinez y Garcia, of Manila, province of Manila,  
309 Philippine Islands, residing at No. 62 Calle Lavezares, District of Binondo, of age, married a third time, and a merchant by occupation, having executed a contract in writing on the thirtieth of February last, with Robert W. Brown as the agent of the International Banking Corporation, whereby I sold and transferred

to him a house on Calle Barcelona, numbered 23, District of Binondo, the metes and bounds of which are set out in the said contract, it having been impossible to record the said transfer on account of a certain defect which, however, can be corrected, and in order to correct the same, I hereby make the following statement: That the house and lot transferred by me by the said instrument of February 13th to the agent of the International Banking Corporation, subject to the right of redemption, shall be understood to refer only to half of the said house and lot, the other half belonging to the conjugal partnership between myself and my deceased wife, Gertrudis Ilustre, whose undivided estate is at present under my control.

In witness whereof I sign these presents this six day of March, 1903.

(Signed)

FRANCISCO MARTINEZ

In the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

310

*Acceptance.*

I, Robert W. Brown, the Manila agent of the International Banking Corporation, as appears from the power of attorney conferred upon me and which has been duly recorded in the mercantile register of this city, and which I have exhibited to the contracting party, of age, married, a resident of Manila, and by occupation a merchant, do hereby accept in all its parts the sale referred to in the instrument of February 13th, last, of house numbered 23, Calle Lavezares, District of Binondo, as well as the foregoing statement. In witness whereof I sign these presents in Manila, this sixth day of March, 1903.

(Signed)

R. W. BROWN

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila, this seventh day of March, 1903, personally appeared before me Francisco Martinez y Garcia and Robert Wemyss Brown known to me to be persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public*

My Commission expires January 1, 1905.

311

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."



## DEFENDANT'S EXHIBIT 123-11.

To all to whom these presents shall come, I, Francisco Martinez y Garcia, of Manila, province of Manila, Philippine Islands, residing at 62 Calle Lavazares, district of Binondo, of age, married a third time, and by occupation a merchant, hereby manifest and make known that, having executed a certain instrument on the thirteenth of February, last, with Robert W. Brown as agent of the International Banking Corporation whereby I sold and transferred to him a certain piece of property on Calle Lavezares, number 57, District of Binondo, more particularly described in the said instrument, and not having been able to record the said sale on account of a certain defect in the deed, which however may be corrected, now for the purpose of correcting such defect, I hereby make the following statement: That the sale of the house and lot made by me in the said instrument of February 13th to the said agent of the International Banking Corporation, subject to the right of redemption, should be understood to refer only to one-half of the said property, the other half belonging to the conjugal partnership between myself and my deceased wife, Germana Ilustre, whose undivided estate is at present under my control.

In witness whereof, I have signed these presents this six day of March, 1903.

(Signed)

FRANCISCO MARTINEZ.

112 Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

*Acceptance.*

I, Robert W. Brown, the Manila agent of the International Banking Corporation as appears from my power of attorney duly recorded in the mercantile register of this city and which I have exhibited to the other contracting party, of age, married, a resident of Manila, and by occupation a merchant, do hereby accept in all its parts the sale referred to in the said instrument of February 13th relating to house number twenty-three calle Barcelona, District of Binondo, as well as the foregoing statement. In witness whereof I sign these presents in Manila this sixth day of March, 1903.

(Signed)

R. W. BROWN.

Signed in the presence of:

JOSE GERVACIO GARCIA.  
GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

In the municipality of Manila, province of Manila this seventh day of March, 1903, personally appeared before me Francisco Marti-

nez y Garcia and Robert Wemyss Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their own free act and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

313 Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

Notary Public.

My Commission expires January 1, 1905.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

#### DEFENDANT'S EXHIBIT NO. 123-12.

To all to whom these presents shall come, I, Francisco Martinez y Garcia, of Manila, province of Manila, residing at 62 Lavazera district of Binondo, of age, married a third time and by occupation a merchant, do hereby manifest and make known: That having executed on February 13th, last, a certain contract with Robert W. Brown as agent of the International Banking Corporation, whereby I sold and transferred to him a certain piece of property on Calle San Nicolas, numbered 40, District of Binondo, and which is more particularly described in the said deed, and the said instrument not having been recorded on account of a certain defect which however may be corrected, now, in order to correct such defect, I hereby make the following statement: That the sale of the parcel of land and buildings made by me by virtue of the said deed of the thirteenth of February, last, with the right of redemption, to the agent of the International Banking Corporation, should be understood to refer only to one-half of the said property; the other half belonging to the conjugal partnership between myself and

314 my deceased wife Germana Ilustre, whose undivided estate is at present under my charge.

In witness whereof I sign these presents this sixth day of March 1903.

(Signed)

FRANCISCO MARTINEZ.

Signed in the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

#### *Acceptance.*

I, Robert W. Brown, the Manila agent of the International Banking Corporation, as appears from my power of attorney duly recorded in the mercantile registry of this city, and which I have exhibited to the other contracting party, of age, married, a resident of Manila by occupation a merchant, do hereby accept in all its parts the sale referred to in the deed of February 13th of house numbered 40 Calle

San Nicolas, District of Binondo, together with the foregoing statement.

In witness whereof I sign these presents in Manila, this sixth day of March, 1903.

(Signed)

R. W. BROWN.

In the presence of:

JOSE GERVACIO GARCIA.

GREGORIO RAMOS.

UNITED STATES OF AMERICA,

*Philippine Islands, City of Manila:*

315 In the municipality of Manila, province of Manila, this seventh day of March, 1903, personally appeared before me Francisco Martinez Garcia and Robert Wemyss Brown, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be an act of their own free will and deed.

(Signed)

FRANCISCO MARTINEZ.

(Signed)

R. W. BROWN.

Before me:

(Signed)

VICENTE G. AZAOLA,

[NOTARY'S SEAL.]

*Notary Public.*

My Commission expires January 1, 1905.

Indorsed: "July 8-04. H. D. G. V. G. T. C. K."

316

DEFENDANT'S EXHIBIT No. 124.

No. 24014.

MANILA, *February 2, 1903.*

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars One thousand pesos mex.

\$1000\$

(Signed)

FRANCISCO MARTINEZ.

Local Currency.

Indorsed: Gregorio Ramos.

Indorsed "July 12-04. T. C. K. C. G. M."

DEFENDANT'S EXHIBIT No. 125.

No. 24013.

MANILA, *February 2, 1903.*

The International Banking Corporation, Manila.

Pay ——— or Bearer Dollars Two Thousand pesos mex.

\$2000\$

RWB.

(Signed)

FRANCISCO MARTINEZ.

Local Currency.

Indorsed: Pilar Corrales.

Indorsed "July 12-04. T. C. K. C. G. M."

## DEFENDANT'S EXHIBIT No. 126.

No. 24024.

MANILA, February 11, 1903.

The International Banking Corporation, Manila.

Pay Ricardo Regidor or Bearer Dollars One thousand mex.

\$1000\$

RWB.

(Signed)

FRANCISCO MARTINEZ.

Local Currency.

Indorsed: Received, Manila, February 12, 1903.

(Signed)

R. REGIDOR.

Indorsed "July 12-04. T. C. K. C. G. M."

317

## DEFENDANT'S EXHIBIT No. 127.

The International Banking Corporation, Manila.

Credit Current Account of Pedro Cantero.

In Silver .....	
In Notes .....	
In Cheques .....	60)
In Drafts promissory note p \$1000 less 8% dis.....	920)
	<hr/>
	60)
	920)
	<hr/>

Manila, March 13, 1903.

Total Nine hundred eighty pesos mex.

CSH.

(Signed)

R. W. BROWN, *Cashier*.

Stamp: International Banking Corporation, Manila, Mar. 12, 1903.

The International Banking Corporation, Manila.

Credit Current Account of Pedro Cantero.

In Silver .....	
In Notes .....	
In Cheques .....	7587.68
	<hr/>
In Drafts .....	7587.68
	<hr/>

Manila, March 17, 1903.

Total Seven thousand five hundred eighty-seven 68/100.

(Signed)

C. S. HARVEY, *Cashier*.

Stamp: International Banking Corporation, Manila, Mar. 17, 1903.

## The International Banking Corporation, Manila.

Credit Current Account of P. Cantero.

In Silver .....	
In Notes .....	
In Cheques .....	8250.
In Drafts .....	

---

\$8250.

Manila, Ap'l 8, 1903.

318

## EXHIBIT No. 127 Cont'd. a.

Total Eight thousand two hundred and fifty —.

(Signed) C. S. HARVEY, *Cashier.*

Stamp: International Banking Corporation Manila, April —, 1903.

## The International Banking Corporation, Manila.

Credit Current Account of Pedro Cantero.

In Silver .....	\$800.
In Notes .....	
In Cheques .....	
In Drafts .....	

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\$800.

Manila, 29 June, 1903.

Total Eight hundred dollars Mex.

(Signed) C. S. H., *Cashier.*

## The International Banking Corporation, Manila.

Credit Current Account of Pedro Cantero.

In Silver .....	\$1000.
In Notes .....	
In Cheques .....	
In Drafts .....	

---

\$1000.

Manila, July 31, 1903.

Total One thousand pesos mex.

(Signed) C. S. H., *Cashier.*

## The International Banking Corporation, Manila.

Credit Current Account of Pedro Cantero.

In Silver .....	\$2883.
In Notes .....	
In Cheques .....	
In Drafts .....	

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\$2883.

319

## EXHIBIT No. 127 Cont'd. b.

Manila, August 31, 1903.

Total Two thousand eight hundred and eighty-three pesos.

C. S. H., *Cashier.*

Stamp: International Banking Corporation, Manila, Aug. 31, 1908.

The International Banking Corporation, Manila.

Credit Current Account of ———.

In Silver .....	
In Notes .....	
In Cheques .....	6600.
In Drafts .....	
	<hr/>
	\$6600.

Manila, Nov. 9, 1903.

Total Six thousand six hundred.

(Signed)

C. S. HARVEY, *Cashier.*

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## DEFENDANT'S EXHIBIT No. 128.

To all whom the present may concern:

The undersigned, John Beardsall Lee, resident in house No. 32 of Great Saint Helens, in the city of London in the United Kingdom of Great Britain, where he is at present established as a banker; by the present instrument manifests:

That, whereas, the Association known as the International Banking Corporation, a corporation constituted and existing under and by virtue of the laws of the State of Connecticut, and which has established its social domicile in the City of New York, United States of America, and which shall be designated hereafter by the words "The Corporation," by means of a written power of attorney, signed by its acting president, Valentine D. Snyder and its treasurer, John Hubbard, in which power of attorney the corporation seal was stamped on the 5th day of March 1902, constituted and appointed me, the said John Beardsall Lee, as its true and lawful attorney in fact and agent, in order that in the name and representations of said corporation I should establish and conduct its business outside of the United States; in order that, for the purpose of accomplishing such objects I should lease, rent or occupy in the name of said corporation any houses, offices or buildings; in order that I should also contract and employ whatever agents, managers, bookkeepers, cashiers and employes and assistants, messengers or other persons who might be necessary for the conduct and progress of the business of the corporation under the terms, and conditions which to me might seem prudent; in order that said attorney in fact, exercising his right of election, should suspend, remove and discharge all or any of such

persons, appointing others in their place; in order, that he  
321 should also ask, claim, demand judicially, collect and receive  
of all and every person or persons whomsoever, political or  
duly constituted corporations whatever may be the business and the  
person interested therein, all and every sum or sums of money inter-  
ests, debts, rights, things, merchandise, stocks of goods, effects  
and things of every nature and alass whatsoever which then or at  
any other time or times subsequent should be or could become due,  
payable or susceptible of collection or be taken possession of by said  
corporation for whatever reason; in order that also, in the name and  
representation of the corporation, he should liquidate whatever ac-  
counts among those in which the corporation may then or might  
thereafter be interested at whatever time, in whatever manner, or  
in those which it should be or should become interested jointly with  
whatever persons or persons or corporation or corporations, political  
or duly constituted, whatever they may be; in order that he should  
pay or receive the balance or balances of such accounts, according to  
the circumstances of the particular case; in order that he may also  
in the name and representation of said corporation, purchase and  
draw, accept, endorse or negotiate in any other manner, all and every  
class of promissory notes, drafts, inclusive of those drawn against  
the Treasury of the United States, or the Sub-treasury of the United  
States, or either of them in order that he should sign, endorse, ac-  
cept, transfer or cede, all and every kind of bill or bills of lading,  
orders of delivery, warehouse receipts, or other proofs of the right  
which it might have to the particular merchandise, bills of insurance  
against fire or maritime risks, contracts, leases or other documents  
or instruments of whatever nature which in the judgment of said  
attorney in fact may be necessary; in order that he may also settle  
with any person or persons with respect to any debt or what-  
322 ever sums of money, credits or claims, whatever they may be,  
which then should be or may hereafter at any time or times  
subsequent become due or payable to said corporation; in order that  
he should propose or accept any compromise of the same, giving  
receipts, exonerations and other discharges as to the whole or any  
part of said debts, sums or dividends; in order that he should sub-  
mit to the judgment or arbitrators or any of said debts, claims and  
all the other credits, rights, questions, business or cases in which the  
corporation should or might become in any other manner interested;  
in order that he should execute and sign any agreement or obligation  
he may bind himself to accept the judgment which might be pro-  
nounced with reference to such case according as said attorney in  
fact should consider it advisable to do; in order that he should also  
file and pursue any lawsuit or process before any tribunal of justice  
or of law or other jurisdiction for the purpose of collecting or taking  
possession of any debt, sum of money, right, title, interest, property,  
business or thing which then or in the future should result to or be  
owing or which should belong to the corporation for any reason, or  
of whatever nature; in order that he should withdraw from such  
suits, process, excluding himself from the same according as said  
attorney in fact, exercising his right of election or acting according

to his judgment, should consider convenient; in order that he should also demand judicially and take the other means and avail himself of the other methods towards collecting, receiving and obtaining or recovering such sum or sums of money or other things of every nature whatsoever as said attorney in fact may now or hereafter consider to be due, belonging of pertaining or payable to said corporation by any persons whomsoever; in order that on re-

323 ceiving or taking delivery of the same respectively, he may give and exact receipts and legal discharges according to the case in order that he may appear in the name and representation of the corporation and defend or settle whatever suits, actions or other process presented or pursued, now or which may hereafter be presented or pursued or continued against the corporation before any tribunal or justice; in order that in his said capacity as attorney in fact he should refuse to pay and object to the payment of any sum or sums of money, or to the performance or satisfaction of any claim, credit or other affair, according as said attorney in fact should deem proper; in order that he should pay, satisfy, settle, compromise under determined conditions with respect to any debts owing or which may claim to be owing by the corporation, giving and executing receipts and discharges valid and sufficient for that purpose; in order that he should also insure against fires, maritime risks, or otherwise, any property of the corporation or in which it may become interested; in order that in case of loss he should adjust the amount of the latter, executing and giving the receipts and discharges sufficient for the case; in order that he should appoint for the aforesaid purpose-, or any of them, one or more substitutes in order that they should take the place of said attorney in fact, with power to revoke from time to time said appointments, the said corporation obligating itself by virtue of such instrument to ratify and confirm, and said corporation hereby confirms and ratifies whatever the said attorney in fact or his substitute or substitutes by him appointed may do or order to be done legally, in or concerning said business by virtue of the same instrument and as the corporation declared by means of said instrument that the powers in it conferred should not be considered in any case as limited to the

324 said acts, operations and business, but that on the contrary said powers were conferred with the object that they should comprehend in all and every case any other business operation and — whatsoever, not expressly mentioned or indicated in said instrument, and which might in any manner arise from the business of said corporation in any parts other than in the United States of America.

Now therefore, the present instrument Witnesseth,

That the said John Beardsall Lee, by virtue of and in the exercise of the powers and authority which to that effect have been conferred upon him by the power of attorney which has been in part reproduced above, and by virtue and in the exercise of all of the other powers and authority which for that purpose have been conferred upon him, Constitutes and Appoints and Authorizes and Empowers, by means of the present instrument, Robert Weymuss Brown,



lately a resident in the bank known as the Chartered Bank of India, Australia and China, and to the present time residing in Manila, Philippine Islands, for the office of the true attorney in fact and legitimate agent of the said International Banking Corporation, in order that in the name and in the representation of the said John Beardsall Lee he should conduct and transact the business of said corporation in Manila, aforesaid, executing and exercising for that purpose any and all of the acts, powers, authority and business expressly mentioned in said power of attorney which in part has been reproduced above; in order that he should construct and install one or more vaults, safe or establishments or strong installations as a treasury for the custody of the values of said corporation in Manila, aforesaid.

It is to be observed that the powers of the said Robert Weymuss Brown shall not include the right of appointing one or more substitutes, or one or more managers, in the place of the said  
325 Robert Weymuss Brown, limiting his power above mentioned to the exercise and execution of the acts and business expressly mentioned in said instrument, of the power of attorney above produced in part, without said powers including either any other business or acts which may not be mentioned in said instrument which could arise from the business of said corporation in Manila, aforesaid.

In Testimony Whereof, the said John Beardsall Lee has signed the said instrument and has authorized it with his seal, this 25th day of March, 1902.

(S'g'd)

J. B. LEE. [SEAL.]

Signed, sealed and executed by the said John Beardsall Lee in his capacity as attorney in fact for the International Banking Corporation, Limited.

PERCE MATTOCK,  
EDMUND S. SNEWIN,  
*Proprietors, Residents of Cornhill,*  
75 and 77, London, England.

The foregoing document was registered at page No. 366, Folio 101, vuelto, 2nd Registration Book of Association of the Mercantile Register of this Capital, Volume 10.

Manila, June 6, 1902.

DON ENRIQUE BARRERA Y CALDES. [SEAL.]

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# DEFENDANT'S EXHIBIT No. 129.

No. 24001. January 20, 1903. Pay promissory note or (Name illegible). \$3000\$.

No. 24002. January 20, 1903. For Ysidoro Martinez. \$4000.

No. 24003. January 20, 1903. For me, Francisco Martinez. \$2000# Mex.

No. 24004. January 21, 1903. Hilarion S. Jose. Macur Natividad. \$2000.

No. 24005. January 22, 1903. Insurance policies. \$1100.

No. 24006. January 22, 1903. To Mr. Poblete. \$2000.

No. 24007. January 22, 1903. To Mr. Tuiseto one thousand pesos \$1000.

No. 24008. January 23, 1903. To Chino Palanco Six hundred pesos \$6000.

24009. Manila — 21, 1903, of Domingo Flores One thousand pesos. \$1000\$.

No. 24-10. January 26, 1903. Water system. One thousand hundred pesos \$1500\$.

NoN. 24011. January 30, 1903. Ysidro Martinez \$1000\$.

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*Defendant's Exhibit No. 129 Cont'd.*

No. 24012. Manila, January 31, 1903. Francisco Martinez C thousand five hundred pesos \$1500\$.

No. 24013. February, 1903. For Mr. Regidor Two thousand pesos \$2000\$.

No. 24014. February 2, 1903. For Mr. Regidor One thousand pesos \$1000\$.

No. 24015. February 3, 1903. For goods \$2000\$.

No. 24016. February 3, 1903. For jewels of Ysidro Martinez \$3000\$.

No. 24017. February 4, 1903. To Mr. Santiago Lawyer \$2000\$.

No. 24018. February 5, 1903. To the Chinese Chamisan \$1500.

No. 24019. February 6, 1903. Insurance calle Aceiteros a Espleta \$1500.

No. 24020. February 6, 1903. Mrs. Ninas \$3000\$.

No. 24021. February 7, 1903. For Jose Basa \$3000\$.

No. 24022. For pilot 1903 \$1000.

No. 24023. For the ring 1903 \$1000.

No. 24024. February 11, 1903. Mr. Regidor \$1000.

- 328            *Defendant's Exhibit No. 129 Con't'd.*
- No. 24025. February 16, 1903. For Gregorio Legaspi for the document. \$9000\$.
- No. 24026. February 21, 1903. For Ysidro Martines \$500\$.
- No. 24027. February 28, 1903. For surveys \$3000\$.
- No. 24028. February 28, 1903. For Mr. Lozana \$600\$.
- No. 24029. Blank.
- No. 24030. Manila, March 9, 1903, for coal \$200.
- No. 24031 to 24033. Blank.
- No. 24034. March 29, 1903. D. Carmen \$3150.
- No. 24035. March 29, 1903. Three thousand one hundred and fifty pesos. D. Carmen \$3150.
- No. 24036. March 31, 1903. For the Macao Two thousand five hundred pesos \$2500.
- No. 24037. Manila, April 20, 1903. To pay Mr. Papa Four thousand mex. \$4000\$.
- No. 24038. April 21, 1903, for rice \$5250\$.
- No. 24039. April 21, 1903. For (Ricardo Regidor) Manuel P. Ramirez \$2000\$.

- 329            *Defendant's Exhibit No. 129 Cont'd.*
- No. 24040. April 21, 1903. To pay promissory notes Ricardo Regidor \$2000\$.
- No. 24040. April 23, 1903. To pay to Mr. Cantero the registration fees \$400\$.
- No. 24042. May 20, 1903. To pay to Mr. Azaola fees \$500\$.
- No. 24043. Blank.
- No. 24044 to 24050, checks and stubs both blank.

DEFENDANT'S EXHIBIT No. 130.

On page 339 of the Transcript of Evidence appears the following:  
Mr. GALE: The defendants offer in evidence as Exhibit 130, statement in writing of Lyon & Wolfson to the International Bank-

ing Corporation, accounting for rents collected dated January 1904, showing the first collections of rents from the Martinez properties to have been made December 5, 1903, showing the amount turned in to the Bank as collected, 708 pesos and by agreement of counsel it is noted in the record and this note is to be taken in evidence, the statements which are furnished to be returned to the business, Mr. Wolfson.

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DEFENDANT'S EXHIBIT No. 131.

DEAR SIR: We beg to enclose herewith a complete list of properties acquired by the International Banking Corporation from Francisco Martinez, together with their location and names of the tenants and amount of rents they are paying and the months for which rents are due.

Each tenant has been verbally notified that in future all rents are payable to the Agent of the International Banking Corporation. Written notice will be sent them within the next few days and we suggest that you have your representative prepare to collect rents between the 1st and 5th of December, furnishing us with a list of those who refuse to comply with our demand.

Awaiting your further orders, we remain, etc.

(Signed)

LYON & WOLFSON

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DEFENDANT'S EXHIBIT No. 132.

International Banking Corporation.

\$300.

MANILA, June 5, 1903.

Debit. Francisco Martinez.

J. G. Garcia account for escritura dated 4 June 1903 as for amount attached .....

R. W. B.,

Accountant.

Stamp: Cash.

Received of agent of Francisco Martinez the sum of three hundred pesos agreed compensation for inscriptions in Registry of Properties, Manila, June 4, 1903.

(Signed)

JOSE GERVACIO GARCIA

(Ten cent. Revenue stamp.)

OK. The International Bank will pay.

Manila, June 4, 1903.

(Signed)

FRANCISCO MARTINEZ

## DEFENDANT'S EXHIBIT No. 133.

International Banking Corporation.

\$——.

MANILA, December 18, 1903.

Debit. Francisco Martinez a/c No. 2.

Transferred to L. Otero..... 708

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\$708

R. W. B.,

*Accountant.*

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## DEFENDANT'S EXHIBIT "A."

Instrument of February 12th, 1904.

See p. — record case No. 3472.

Endorsed on cover: File No. 21,370. Philippine Islands, Supreme Court. Term No. 266. Mariano Martinez, Administrator of Francisco Martinez, deceased, Appellant, vs. The International Banking Corporation. File No. 21,371. Term No. 267. Mariano Martinez, Administrator of Francisco Martinez, deceased, Appellant, vs. The International Banking Corporation. Filed October 12th, 1908. File Nos. 21,370 and 21,371.

# Supreme Court of the United States.

OCTOBER TERM, 1910.

MARIANO MARTINEZ, Administra-  
tor of Francisco Martinez, de-  
ceased,

Appellant,

*vs.*

THE INTERNATIONAL BANKING  
CORPORATION.

No. 79.

Appeals from  
the Supreme  
Court of the  
Philippine  
Islands.

MARIANO MARTINEZ, Administra-  
tor of Francisco Martinez, de-  
ceased,

Appellant,

*vs.*

THE INTERNATIONAL BANKING  
CORPORATION.

No. 80.

## BRIEF FOR APPELLANT.

### INTRODUCTORY STATEMENT.

These are appeals from two judgments of the Supreme Court of the Philippine Islands entered

on March 24th, 1908, (Rec., pp. 36, 103), reversing judgments entered on March 29th, 1906, in the Court of First Instance of the City of Manila in favor of the original defendant Francisco Martinez against the original plaintiff, The International Banking Corporation, and directing judgment absolute in favor of the plaintiff.

These two suits were tried together and constitute one litigation, as the result of No. 79 is necessarily determined by that of No. 80. The original defendant Francisco Martinez died after the appeals to this Court were taken, and his administrator was substituted. His guardian, the other defendant, has thus become *functus officio*. For the sake of brevity, we shall in this Brief refer to the original defendant, Francisco Martinez, simply as "the defendant," "the appellant" or "Martinez," and to the original plaintiff as "the Bank" or "the plaintiff."

Case No. 79 was a suit of an equitable nature brought by the Bank against Martinez to foreclose a mortgage upon the steamer Germana, sell the steamer, and collect an alleged debt of 30,000 pesos claimed to be secured thereby (see Compl't., Rec., pp. 14, 15). The defendant, by answer and cross-bill, claimed that at the time of executing the mortgage he was mentally incapacitated and hence legally incompetent, that the whole transaction was void for fraud, duress and conspiracy, that the alleged indebtedness was a part of the subject matter of the instrument sued on in the other case (No. 80), which extinguished and superseded the instrument sued on in No. 79, and that the plaintiff had wrongfully taken and held possession of the steamer and refused to account

for its profits. He demanded as affirmative relief the setting aside of the whole transaction, the return of the steamer, and an accounting of its profits. (See Amd. Ans., Rec., pp. 15-19.)

The Court of First Instance in substance sustained these defences, dismissed the plaintiff's suit, and directed a return of the steamer (Rec., pp. 19-20).

The Philippine Supreme Court reversed this judgment, held that the transaction was valid, gave judgment for the plaintiff against the defendant in the sum of 28,599.13 pesos with interest at 8% from January 1st, 1904, and directed a sale of the steamer to satisfy the judgment. It noted, however, that the claim in suit was also involved in the other case, and observed that provision was made in the judgment therein against a double recovery. (See Rec., p. 32.)

Case No. 80 was a suit upon another instrument executed by Martinez in favor of the Bank, to provide for the payment of a claim stated to amount to 159,607.81 pesos. The complaint alleged this instrument to be in effect a mortgage upon the property to which it referred, and prayed for a foreclosure and sale to satisfy the alleged debt. (See Compl., Rec., pp. 47-49.) By answer and cross-bill the defendant set up the same defences as in No. 79; also that the alleged consideration for the instrument sued on was padded and fictitious, and contained duplications of the same item, and included the item of 30,000 pesos which was the subject of the other case; also that the instrument sued on was not in law a mortgage, but was an agreement for the transfer of property with right of repurchase (*pacto de retro*), and that the de-



fendant had never refused to perform such contract, but that the plaintiff had failed to perform its own obligations thereunder; also that the plaintiff had wrongfully taken possession of the property in question and received its rents and profits. The defendant demanded that the entire transaction be set aside; that plaintiff's suit be dismissed; and that plaintiff account for the rents and profits it had received. (See Second Amd. Ans., Rec., pp. 70-78.)

The Court of First Instance held that the whole transaction was the product of a conspiracy, of which the Bank's local manager Brown was one of the moving spirits, to defraud Martinez, who was at the time incompetent; that the Bank had notice of the facts through its manager; that the instrument sued on was not a mortgage, but a contract to convey; that plaintiff's only proper remedy would have been a suit for specific performance; and that the Bank must account for the rents and profits of the property of which it had wrongfully taken possession. Judgment was rendered in favor of the defendant for 29,281.92 pesos, being the amount of rents collected by the plaintiff, and also for the return of the possession of the property. (Rec., pp. 85-88.)

The Philippine Supreme Court reversed this judgment, holding that the agreement sued on was valid and enforceable, although not as a mortgage, and that Martinez was indebted to the Bank in the sum of 159,607.81 pesos, less certain rents, and directing Martinez to execute and deliver to defendant a conveyance, with right of repurchase, of the properties in question, except the steamer Germana, the judgment to contain a further provision that whatever might be realized

from the sale of the Germana in the other case should be considered as a partial payment on account of the amount adjudged to be due in this action. (Rec., pp. 96-99, 103.)

From these two judgments of the Philippine Supreme Court the present appeals have been taken.

### **Statement of Facts.**

The circumstances and transactions out of which this litigation has arisen are complicated and obscure, and the evidence, both oral and documentary, is necessarily voluminous. So far as possible we wish to avoid imposing upon this Court the burden of examining into the labyrinthine details of the frauds practiced upon the defendant, and we shall endeavor to state only the most salient facts in their simplest outlines—enough to show the errors of the Court below, but no more.

This case is the sad and sordid story of the spoiling of a "prodigal father" in his helpless old age, by a gang of common swindlers, one of whom furnished the necessary machinery for the operations through the opportunity afforded to him by the plaintiff Bank as its local manager, with full control of its Manila branch (See Rec., p. 510).

Francisco Martinez, the original defendant, was a native of Balayan, Province of Batangas. (Rec., p. 315.) In the year 1902, or thereabouts, when he was about sixty-five years of age, his wife died. He was at this time a wealthy man, worth about 1,000,000 pesos, largely invested in

income-producing real estate in Manila. A large part of this property appears to have been "community property," requiring liquidation and division with his wife's estate. Some controversy arose on this subject, and his son Pedro brought suit against him. He also lost three children by death. (Rec., p. 323.) His mind shaken and unbalanced by all these troubles, the old man sought refuge and distraction in gambling. He soon exhausted his ready cash and began to give notes for his gambling debts. One of the people with whom and at whose house he gambled was Isidro Martinez, who testified in this case. In January, 1903, the defendant's funds being doubtless depleted, he asked Isidro Martinez to arrange for the opening of a credit for him with the plaintiff Bank. (Rec., p. 215.) Isidro Martinez called in the services of a Chinaman, Montilivano, the manager of a business house, and together they went to see Mr. Brown, the manager of the Bank. They afterwards exhibited evidences of Martinez's solvency, and Ricardo Regidor, who appears to have been employed by the Bank as a "credit-man", either generally or in this particular case, looked into the matter and reported favorably (Deft.'s Exh. 62, Rec., p. 432). A credit of 30,000 pesos was opened on January 20, 1903. (Rec., p. 215.) Heavy commissions were paid by Martinez for securing this accommodation, 3000 pesos to Isidro Martinez and 600 pesos to the Chinaman, by cheques drawn against this credit. (Rec., p. 222.) Martinez continued to draw cheques against this account, many of them in favor of Isidro Martinez for gambling debts (Rec., pp. 216, 222). Soon after the opening of the credit, Isidro Martinez received a cheque

from the defendant dated January 30, 1903, for 1000 pesos, which he took to the Bank to get cashed. This was refused, and Isidro Martinez was referred by the Bank manager to Regidor, who "was taking charge of all these documents for the Bank" and who was the Bank manager's accomplice and agent. (Rec., p. 216.) This was apparently the first overt act of the conspiracy. Regidor said to Isidro Martinez: "As it is a gambling debt, you must reduce it 25% ;" Isidro Martinez assented, the cheque was again presented, this time by Regidor, and was cashed at its face value; Isidro Martinez paying 250 pesos out of the proceeds to Regidor in the Bank manager's presence. (Rec., pp. 216, 217.) This proceeding was frequently repeated, with variations in the toll exacted by Regidor, always with Brown's knowledge and assent.

Further details of Regidor's introduction to the transaction are related by his former private secretary, Pedro Cantero. He had already "had transactions of discounting pagueas" (promissory notes) in connection with Brown the Bank manager, and when Martinez first applied for his credit, the manager directed Regidor to investigate Martinez and his circumstances. Regidor did so, and upon his favorable report the account was opened (Rec., p. 139). From that time (the end of January, 1903), the manufacture of paper obligations of Martinez to the Bank was industriously carried on under the active direction of Brown the Bank manager, his accomplice Regidor, and the latter's handy-man Cantero. The last named appears to have held the pen, and actually prepared most of the instruments. He considered Martinez men-

tally incapacitated, because he would sign any paper presented to him, without knowing its contents, if only money were paid to him (Rec., p. 140). Nevertheless Cantero went on with the transactions, because there had been, as yet, no legal adjudication of incapacity (Rec., p. 141). Among the papers so executed was a most sweeping power of attorney to Cantero (Rec., pp. 335, 336). Cantero himself testified that Martinez "did not have any knowledge" of this power "until a long time afterwards, for that reason I did not want to make use of it when it was given to me" (Rec., p. 140).

Not satisfied with the profits accruing on the cheque transactions, the conspirators also searched out and bought up outstanding obligations of Martinez, invalid because for gambling debts, at a small fraction of their nominal amount, and charged them to his account at their face value (Rec., pp. 231, 344).

Once the old man was in their clutches, his spoilers played upon his fears and his credulity as well as his gambler's necessities. Regidor held the purse strings, and, by the order of Brown the Bank manager, no cheques were paid by the Bank without his leave (Rec., p. 282). Martinez would go to Regidor's house, and, upon the threats of Regidor and Brown, would sign whatever papers they presented to him, after vain efforts to refuse. He testified (Rec., pp. 282-283):

Q. Who was it threatened you when you refused to sign the various documents?

A. Mr. Regidor and Mr. Brown.

Q. Tell the Court what they did and said and threatened.

A. Sometimes they told me that they would strike me, and other times that they would throw me out of the window. \* \* \*

They told me that they would send me to Bilibid and that they would strike me. \* \* \*

They usually told me that they knew God and would not deceive me and that everything they were doing was in my favor.

Q. Did you believe at that time what they said to you?

A. Yes, sir. Because they told me that they recognized God and that they would never deceive me. \* \* \*

Q. Why did you believe what Brown said to you?

A. He said that he would never deceive me because he was acting according to the laws of God."

The first specific transaction which enters into the causes of action set up by the plaintiff is a loan claimed to have been made by the plaintiff to the defendant on May 2nd, 1903, to the amount of 30,000 pesos, secured by a pledge of a one-half interest in the steamers Germana and Don Francisco, afterwards changed to the entire interest in the Germana alone.

According to a memorandum made by the Bank manager in answer to a written enquiry from Regidor (Defts. Exh. 4, Rec., pp. 136, 343, 344), the supposed proceeds of this loan were accounted for by debiting Martinez' account on June 30, 1903, with the amount of three promissory notes to the total of 25,000 pesos, and paying 2,505 pesos for maritime insurance on July 28th. These notes were actually bought by Regidor from their holder for 1,000 pesos (See post, p. 39). This exhibit is one of the most significant documents in the case, showing as it does the relations be-

tween Regidor and the Bank manager, and their attitude towards their victim. Regidor writes: (Rec., p. 343):

"The escritura of the prodigal I entrusted to Gutierrez, who has not understood the same, and I am making it myself. There are no difficulties. *The prodigal is very well disposed towards the bank.*

\* \* \* \* \*

I desire that you inform me how you have proceeded in your books with reference to the loan of 30,000 pesos guaranteed by the Germana and Don Francisco. Did you deliver to the prodigal this amount of money? Did you credit it in any account in order to establish the payment by you of the loan? I desire to have this detail."

The Bank manager's answer, written on the same piece of paper, reads:

"The payment of the loan account of Germana is as follows:

On the 30th of June the loan account was debited with

16000 pesos, promissory note Mascuñana,  
4000 pesos, promissory note L. Rosario,  
5000 pesos, promissory note L. Rosario,

---

25000 pesos

2505 advanced on the 28th of July for  
maritime insurance paid to Smith  
Bell.

---

27,505."

There can be no doubt that the difference between what was paid for these notes and their face value was divided between the conspirators. The evidence of Rosario, the nominal endorser (Rec.,

p. 281), shows that he also was acting in co-operation with the Bank manager and Regidor. Two other willing tools were Roman Lontoc and Julio Duenas, who, according to the testimony of Ramirez, another of the gamblers, "always accompanied Francisco Martinez" (Rec., p. 235). Lontoc is dead, but Duenas himself testified to their presence on occasions when "Mr. Brown and Mr. Regidor obligated Francisco Martinez to sign the documents which were there on the table" and "shouted at him to sign the documents" and then compelled Duenas and Lontoc to sign as witnesses by the same process of vociferation (Rec., p. 240).

The next important step was the extraction from Martinez of the instrument of June 12, 1903, the basis of the second suit (Rec., pp. 49-51). This purported to provide for the payment of the following claims aggregating about 175,000 pesos, viz.:

- a. Promissory notes to the Bank amounting to 110,000 pesos.
- b. The Germana loan of 30,000 pesos (the basis of the first suit).
- c. The "Varadero" mortgage of \$13,000 U. S. currency.
- d. An instrument of Nov. 29, 1902, for the payment of 9,000 pesos.

The means of payment provided was the agreement of Martinez to convey to the Bank with right of repurchase (*pacto de retro*) all the houses adjudged to him in his partition with his son, Pedro, and the whole interest in the steamer Germana, the Bank agreeing to release to Pedro the houses awarded to him, and the steamer Don Francisco, all of which had been encumbered by previous hypothecations of the defendant's half interest.



The Bank also agreed to place at Martinez' disposition, in account current, the difference in his favor between the indebtedness recited and the prices of the property in the partition, which included the Germana at a valuation of 35,000 pesos. Then follow provisions as to the time and manner in which the right of re-purchase was to be exercised. As will be shown hereafter, the recited consideration for this instrument was grossly padded, and contained duplications and re-duplications of the same item. On its face it extinguished the former pledge of the Germana and Don Francisco.

The partition between Francisco Martinez and his son was made on June 9th, 1903, immediately prior to this instrument, approved by the Court on June 13th, two days before the instrument was signed, and carried out in September, 1903 (Rec., pp. 386, 395, 429).

In May, 1903, a proceeding to place Martinez under guardianship was instituted by one Ortigas, a lawyer to whom Martinez applied for advice in connection with his difficulties with the Bank (Rec., p. 241). Apparently nothing came of this application, but in the same month of May, 1903, the plight of Martinez came to the attention of the public authorities (Rec., p. 272) and a proceeding was instituted by the prosecuting attorney of the City of Manila, in his official capacity and as next friend of Martinez, to place him under guardianship. The Bank intervened in this proceeding, thus showing that it was put upon notice at the time these transactions were going on (Rec., pp. 204, 300). This proceeding resulted in a judgment dated November 19th, 1903, declaring Martinez to be "mentally and physically incapable

and incompetent to manage his estate or care for himself," appointing a guardian of his person and property, revoking all powers of attorney formerly given by him, and enjoining all persons from interfering with his property or transacting any business with him (Rec., pp. 373-375). An application for leave to appeal from this judgment was denied (Rec., p. 376), the Trial Court being satisfied that it was inspired by the same individuals who had already "fleece" Martinez "of many thousands of dollars of his property."

The Bank and its manager flagrantly disregarded this effort of the judicial power to take Martinez under its protection as a ward of the Court. On December 4th, 1903, over two weeks after the adjudication of incompetency, the Bank by its agent, Wolfson, with apparently no color of right whatever, took possession of the old man's property. This was admitted on the Record (p. 287). On February 12th, 1904, nearly two months after the adjudication of incompetency, Martinez was in some way induced to execute a power of attorney to Brown, the Bank manager (Deft.'s Exh. 46, Rec., p. 383), and a conveyance with *pacto de retro* of the properties referred to in the instrument of June 15th, 1903, (Deft.'s Exhibit "A," Rec., pp. 78-84). Both of these instruments were attested by Lontoc and Duenas, the ever present and every ready witnesses.

On or about March 1st, 1904, the career of Brown, as manager of the Bank, came to an end, (Rec., p. 297), fortunately both for the Bank and its depositors. He was, as stated by plaintiff's counsel (Rec., p. 92), "discharged as soon as the directors knew of his improper conduct," but not soon enough to prevent or undo the frauds

already perpetrated, and he left for parts unknown. Another year elapsed before the suits were brought.

Such, in outline, is the story; such are the facts about which there can be no serious dispute. Further details of the evidence, showing the relations of Brown the Bank manager, and Regidor, the methods by which they and their tools played upon the old man's weakness, the juggling of accounts by which a few possibly legitimate items were multiplied and expanded into the huge fictitious consideration recited in the instrument of June 15th, 1903, will all be discussed under the appropriate points of our argument.

### **Specification of Errors.**

The Assignments of Errors in the two cases, (Rec., pp. 39-42, 106-109), are very detailed and elaborate and are identical for both appeals. Without waiving the benefit of any of these details, the errors, upon which reversal is prayed, may be more briefly summarized as follows:—

1. The Court below erred in granting a judgment in No. 80 which was not within the issues joined, or supported by the facts pleaded or proven (Assts. 1, 9, 10, 11, 14½, 26).
2. The Court below erred in granting any judgment whatever in favor of plaintiff in No. 79 (Assts. 6, 7, 8).
3. The Court below erred in reversing the Court of First Instance on the facts (Assts. 2, 3, 4, 5, 17, 19, 21, 22, 25).

4. The Court below erred in granting any relief to plaintiff and in not granting to defendant the relief which he prayed (Assts. 5, 11, 26, 27).

5. The Court below erred in not finding that at the time of the transactions involved, Martinez was incompetent (Asst. 19).

6. The Court below erred in not finding that the instruments of May 2nd and June 2, 1903, were invalid for fraud, undue influence and lack of consideration (Assts. 13, 14).

7. The Court below erred in not holding that the Bank was bound by the fraudulent acts of Brown, as its manager, and estopped to enforce instruments tainted with such fraud, of which it had notice through Brown's knowledge (Assts. 15, 16, 18, 20).

### **Brief of the Argument.**

The appellant's position is briefly this:—Brown, as manager of the plaintiff Bank, used his position as such and the machinery of the Bank to obtain from Martinez obligations for the payment of money, and liens upon property, culminating in the instruments sued on, without paying to or for the benefit of Martinez anything but a small portion of the pretended consideration. These instruments were obtained by fraud, undue influence and threats. Martinez was at the time incompetent, and Brown knew it. The Bank is thus affected with notice both of its manager's frauds and Martinez' incapacity, and is estopped to enforce the instruments tainted therewith. The decision of the Court of First Instance on

these questions of fraud and incompetence was in accordance with the preponderance of evidence and should have been affirmed.

It is immaterial whether Regidor or Brown was the originator and inspirer of the frauds upon Martinez. Brown was an active, efficient and necessary participant, and the scheme could not have been carried out without his intervention as manager of the Bank. It is also immaterial whether Brown and Regidor or either of them induced Martinez to gamble in the first place, or took advantage of an already existing habit or propensity. It is also immaterial that some small part of the money may have passed from the Bank to Martinez upon legitimate considerations. The transactions as a whole, and the instruments growing out of them, upon which these suits were brought, were vitiated by the basic fraud, and if the Bank desires to make any claim in the nature of a suit for "money had and received" it is for the Bank to allege and prove the necessary facts.

In case No. 79 to foreclose the alleged lien on the Germana, no relief should have been granted to the plaintiff. All of the facts involved were also involved in No. 80, and the two cases were in effect consolidated. In any event, the instrument of May 3rd, 1903, affecting the Germana was wholly merged in and superseded by the instrument of June 15th, 1903, sued on in No. 80, and it was not an existing obligation at the time of the suit. Instead of a right to require a judicial sale of the Germana, the plaintiff had, if it had anything at all, a right to require a con-

veyance of the ship at an agreed price (35000 pesos) to be credited on account of the alleged indebtedness (Rec., pp. 50, 83, 425). The plaintiff cannot pick and choose among the various provisions of the instrument of June 15th, 1903, and enforce only those which it considers beneficial, evading performance by itself of those which it considers burdensome.

In case No. 80, the plaintiff sued upon the instrument of June 15th, 1903, as a mortgage, and sought to enforce it as such by foreclosure and sale. The Philippine Supreme Court held that it was not a mortgage, but a contract to sell certain property upon certain terms, and decreed partial specific performance by the defendant without any allegation or proof of performance, or tender of performance, or willingness to perform on the part of the plaintiff, and excepting from the operation of this decree the Germana, which stood, legally, in precisely the same situation as the other property involved.

The Philippine Supreme Court also failed to take into consideration that, at the time of the transactions involved, Martinez was unquestionably a weak and foolish old man, whether or not he was wholly imbecile, or legally incompetent, and that the Bank, through its agent Brown, knew this, and was thus bound to show the greatest good faith in its dealings with him. Instead of this, it appeared that the Bank had flagrantly violated the Court's order after the Court had declared Martinez incompetent and taken him under its protection, thus forfeiting all claim to any favorable consideration from a Court of Equity.

**POINTS.****I.**

**This Court has jurisdiction of both appeals, with power to review the facts as well as the law.**

Both suits are of an equitable nature and appeal is the proper method of review. No. 79 is a suit to foreclose an alleged lien upon the steamer Germana and sell the steamer in satisfaction thereof. No. 80 was brought as a suit to foreclose a mortgage upon real property and was sustained by the Philippine Supreme Court as a suit for specific performance of a contract of sale.

In No. 80 the amount awarded to the plaintiff by the Court below is 159,607.81 pesos, being equivalent to more than \$75,000 in United States currency. The jurisdiction of this Court under Section 10 of the Organic Act (32 U. S. Stat. 695), is thus manifest, as this is obviously a cause "in which the value in controversy exceeds twenty-five thousand dollars."

The same ground of jurisdiction exists in No. 79. There the jurisdictional amount is made up as follows:

	PESOS.
Amount awarded to plaintiff by Philippine Supreme Court .....	28,599.13
Interest thereon at 8% from Janu- ary 1st, 1904, to date of allow- ance of appeal, April 4, 1908	

(Rec. p. 44), 4 years 3 months and 3 days .....	9,742.76
Defendant's counterclaim for can- cellation of transfer of Ger- mana and return of vessel, val- ued in partition agreement par- ticipated in by plaintiff at.....	35,000.00
(See Rec. p. 425.)	
Defendant's counterclaim for re- ceipts of Germana (Rec. pp. 19, 209) .....	3,152.52
Total	<hr/> 76,494.41

being equivalent to more than \$37,500 U. S. cur-  
rency.

It is the settled law of this Court that where  
the Court below has rendered a judgment in  
favor of plaintiff for less than the jurisdictional  
amount and has also dismissed a counterclaim in-  
terposed by the defendant, who seeks to review  
the judgment, the amount of the judgment, "and  
the amount sued for in the counterclaim, are in  
dispute" and if the two together make up the  
requisite amount, this Court has jurisdiction.

See *Harten vs. Löffler*, 212 U. S., 397.  
*Buckstaff vs. Russell*, 151 U. S., 626.  
*Block vs. Darling*, 140 U. S., 234.  
*Lovell vs. Cragin*, 136 U. S., 130.  
*Dushane vs. Benedict*, 120 U. S., 630.

So in case of cross appeals.

*Walsh vs. Mayer*, 111 U. S., 31.



Moreover, whether or not there was a technical consolidation of the two cases, they constitute in effect but one litigation. No 80 covers the whole field of controversy and No. 79 presents one subordinate phase, the subject matter of which is also involved in No. 80. A full review of No. 80 necessarily involves a review of No. 79 also, and in case of reversal must affect its result, since the amount adjudged due to the plaintiff in No. 80 expressly includes the amount awarded in No. 79, and the judgment in No. 80 (No. 3472 below) directs that whatever may be realized in No. 79 (No. 3471 below) from the sale of the *Germana* be "considered as a partial payment when realized upon the amount due in this action." Thus in case of a reversal in No. 80 complete justice cannot be done without also reversing the judgment in No. 79. The suggestion in the order below allowing the appeal in No. 79 (Rec., p. 43), that the amount there in litigation does not exceed \$15,000. United States currency, fails to take into consideration the defendant's counterclaim. But the Court below nevertheless allowed the appeal upon the ground of "the connection and intimate relation which exist between both matters."

The facts are before this Court for review under the decisions in *De la Rama v. De la Rama*, 201 U. S., 303, 309, and *Strong v. Repide*, 213 U. S., 419, 429. In the latter case the rule was laid down that in the absence of a "technical finding of fact," the opinions below "may be referred to for the purpose of determining what the facts are," and that "on appeal \* \* \* from the Supreme Court of the Philippine Islands the facts (when the Courts below differ) will be reviewed by this

Court under the tenth section of the Act of July 1st, 1902, c. 1369, 32 Stat. 691."

Moreover, there is very little real conflict of evidence. The question is rather of the inferences and conclusions to be drawn from uncontradicted evidence.

## II.

### **The judgments of the Philippine Supreme Court were contrary to the preponderance of evidence.**

These cases were decided by the Court below after the passage of Act No. 1596 of the Philippine Commission (February 25th, 1907), authorizing the Supreme Court of the Philippine Islands, where the proper motion for a new trial had been made below, to "review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment as justice and equity may require."

(Act No. 1596, Phil. Com. Vol. X, War Dept. Rep., 1907, p. 91).

The Court of First Instance having held with the defendant upon the principal issues of fact involved, and the Philippine Supreme Court having held with the plaintiff and ordered judgment absolute in its favor, and each of these contrary decisions having been rendered by "a preponderance of the evidence," as viewed by the deciding

Court, the questions are entirely open for this Court to consider and determine *de novo* upon the whole record. They may be reduced to two ultimate questions of fact:

A. At the time of the transactions involved, was Martinez incompetent to make a binding contract?

B. Was the execution of the instruments sued on induced by fraud, threats or undue influence?

If either of these questions be answered in the affirmative, there must be a reversal and the other question need not be determined. If Martinez was incompetent, the contracts are unenforceable, irrespective of fraud. If the instruments were obtained by fraud or duress, they are void, irrespective of Martinez' mental condition.

A.

#### *Martinez' Capacity.*

The Court of First Instance held in No. 79 (Rec., p. 19), "that Francisco Martinez was at the time of the execution of said document sued on in this case an imbecile, and incompetent to transact this or any other business;" and in No. 80, that he was "demented," and "imbecile," and "not mentally capable of transacting business" (Rec., pp. 86, 87).

The Civil Code in force in the Philippines, provides:

"Art. 1261. There is *no contract* unless the following requisites exist:

1. The consent of the contracting parties.

\* \* \* \*

Art. 1263. The following persons cannot give consent \* \* \*

2. Lunatics or the insane \* \* \*."

Hence if one of the parties to a transaction is insane, or mentally incompetent, any pretended contract arising out of the transaction is, in contemplation of law, simply non-existent.

If, then, Martinez was mentally incompetent at the time of executing the instruments sued on, they have no legal validity or existence whatever. This is a pure question of fact, upon which the two Courts below reached opposite conclusions. It must be remembered that the Trial Judge saw and heard the witnesses, and Martinez himself, and also that the evidence in the incompetency proceeding which appears in this case as an exhibit, was in fact taken before the same judge. The facts on which the Trial Court reached its conclusions, were, to a great extent, the facts out of which the litigation itself arose. The acts of Martinez in gambling away his fortune, in supinely acquiescing in Brown's and Regidor's demands for the execution of notes, checks and other instruments, without knowing their contents, and in giving a power of attorney to Cantero, a total stranger, whose appearance, according to the Trial Judge, would have been a warning to any man not deprived of sense, were so incompatible with sanity and capacity, that the Trial Court properly regarded them as conclusive evidence of incompetency (Rec., p. 86). The Philippine Supreme Court

found otherwise on the strength of the testimony of one witness (Early) "that Martinez discussed his affairs as any business man would in a rather intelligent way, and that he seemed to be rather shrewd in some respects about his business" (Rec., pp. 27, 205) and that he knew enough to settle some of the notes which he gave for gambling debts for a fraction of their face value (Rec., p. 28). That Martinez was able to *discuss* his business with some intelligence is of little importance when balanced against the fact that he conducted it with none. That he paid anything at all in settlement of his gambling debts may do credit to his "sporting spirit," but certainly does not establish his competency. Under the Civil Code:

"Contracts without consideration or with an illicit one have no effect whatsoever. A consideration is illicit when it is contrary to law and good morals." (Art. 1275.)

"The law does not permit any action to claim what is won in a game of chance, luck or hazard." (Art. 1798).

The latter article also provides that a loser cannot recover a voluntary payment, "unless there should have been fraud or should he be a minor or incapacitated to administer his property."

It is difficult to see how the partial recognition and satisfaction of an illegal and unenforceable contract is any evidence of mental capacity. Upon this issue the preponderance of evidence was manifestly with the conclusion of the Trial Court.

## B.

*Fraud, Threats and Undue Influence.*

Even upon the assumption of the Philippine Supreme Court that Martinez was not so mentally incapacitated as to make his contract void *per se*, it is proved without contradiction that he was aged, infirm, weak-willed and foolish, a pitiful exhibition of senile decay, which has now terminated in death.

Where the enforcement of such a man's contract is sought, especially in a Court of Equity, the party seeking relief against him is held to be "bound to the utmost good faith," and even if the other's weakness of mind does not amount to absolute disqualification, fraud, intimidation or gross inadequacy of consideration is deemed a sufficient ground for setting the contract aside.

See Griffith *v.* Godey, 113 U. S., 89, 95.

Allore *v.* Jewell, 94 U. S., 506.

This is the test to be applied in the case at bar. Can it be maintained that the Bank, through its agent Brown, with whom alone Martinez had to do, dealt with Martinez with the "utmost good faith" or gave him adequate consideration for the contracts which it now seeks to enforce?

It makes no difference whether or not there was a prearranged plot between Brown the Bank manager, Regidor and others, to get the old man into their power and swindle him; it makes no difference whether Regidor was a tool of Brown the manager, or *vice-versa*; the important facts are that Brown the Bank manager, and Regidor, had the old man under their control and used their

power to his loss and their gain, and to the incidental profit of the Bank. Whoever first evoked or abetted Martinez' gambling proclivities, it is uncontradicted that at the time his relations with the Bank began he had gambled and was gambling, that he lost large sums of money, that his account with the Bank was used as the means of settling his gambling debts, that Brown the Bank manager knew the facts and coöperated with Regidor in a course of proceeding by which no checks were paid without Regidor's authorization, which was only given upon the payment of heavy tribute under circumstances indicating beyond doubt a division of the spoils between Brown the Bank manager, and Regidor (Rec., p. 217). It also appears that outstanding pagares or promissory notes of Martinez were bought up on behalf of the Bank for a mere fraction of their face value and then charged in full against Martinez' account (See post, p. 39). In view of the profits thus accruing to them, it is quite probable that the Bank manager and Regidor encouraged Martinez to gamble as much as possible, but that is merely matter of aggravation.

In any event, Martinez was encouraged if not practically compelled by the Bank manager and Regidor to create large obligations to the Bank, and encumber substantially his whole estate, without receiving any adequate consideration, as Brown and Regidor well knew;—a course of dealing manifestly inconsistent with the rudiments of good faith, to say nothing of the "utmost good faith," required in such a case, and clearly constituting "insidious machinations," which, under the Civil Code, render a contract void.

See Art. 1265. "Consent given by error, under violence, by intimidation, or *deceit* shall be void."

Art. 1269. "There is *deceit* when by words or *insidious machinations* on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made."

This is a broader and more inclusive category than the common law definition of fraud and is apparently intended to cover any case where an unfair advantage has been taken.

The Court below, referring to some of these transactions, said "they do not show that Martinez was in any way defrauded" (Rec., p. 31). If a bank depositor is not defrauded by a scheme whereby his checks given in payment of illegal and unenforceable obligations are held up until the payee, knowing the invalidity of his claim, pays tribute to a third party, with the certain connivance and probable participation of the Bank's manager, it is hard to imagine what would be held to constitute fraud. If the checks had not been invalid and unenforceable in the hands of their holders, and known to be so, both by their holders and by the Bank manager, there would have been no opportunity for this extortion, nor would the holders have submitted to it. The very transactions themselves sufficiently prove the guilty knowledge and participation of the Bank's manager. If he had not known that the cheques were for an illicit consideration he would have had no pretext for holding them up; knowing it, it was his duty not to use his knowledge as a means of levying blackmail on the holders, whether for the benefit of his asso-



ciate or himself or both. If the cheques were good, Martinez was entitled to have them paid in full to the payees; if they were not good, he was entitled to stop payment on them; in either event he was entitled not to have them diverted in part to a third party. The whole course of proceeding was utterly inconsistent both with regular banking methods and with common honesty. By knowingly assisting in this scheme the Bank manager defrauded Martinez, whether he shared in the plunder or not. Except as a means of accomplishing this result, the requirement of Regidor's authorization was unnecessary and absurd. Circumstances susceptible of but one reasonable explanation are as good as positive proof.

The fraud in buying up void obligations for a trifle and charging them against their maker's account in full is even more obvious. The full details of one such transaction are given hereafter under Point IV (See post, p. 39).

It is perfectly apparent from the whole story that the real object of the Bank manager in opening, and still more in extending and increasing, the credit in favor of Martinez, was to furnish a convenient system of machinery by which to facilitate the swindling of the old man, and to supply him with available funds out of which to be swindled.

The Philippine Supreme Court also held that there was no evidence of a conspiracy between Regidor and the Bank manager to defraud Martinez, apparently reaching this conclusion principally on the ground that none of the spoil was fully traced to the Bank manager's pockets (Rec. pp. 30, 31). But the argument just outlined applies equally to this point. For what conceivable

reason should the Bank manager have refused to pay cheques not rubricated by Regidor except by agreement with Regidor and to enable Regidor to levy tribute? It must have been either an innocent coincidence or a guilty conspiracy: the first inference is incredible, the second inevitable. The scene described by Duenas is also convincing proof of the joint action of the manager and Regidor. The visit of Martinez, accompanied by Duenas, to the house of Regidor; the parley between the manager, Regidor and Martinez behind closed doors, while Duenas and Lontoc stood guard without, until summoned to sign as witnesses the documents just signed by Martinez under compulsion; all these circumstances lead to but one conclusion—a concerted arrangement or conspiracy between the Bank manager and Regidor, to pluck the old man bare. Possibly Regidor was too forceful and astute a scoundrel for Brown to deal with evenly; possibly Brown never received his share of the blackmail paid to Regidor in Brown's presence; it is immaterial how far, as between themselves, there was "honor among thieves"; the fact is evident that there was a conspiracy and that Martinez was its victim.

With these two basic facts so well established, there can be little need for the Court to spend much time upon all the corroborative and cumulative details of the evidence. We shall, therefore, call attention only to some of the most striking instances of corroboration. Among these are some of the letters from the underlings, the lesser tools, of the conspiracy.

Ramirez, one of the gamblers, writes to Regidor:

"In the month of May you called me that I should work in the matter of Martinez in favor of the Bank and that the latter would recompense me very well.

\* \* \* \* \*

"This old man if he was not able to sign the last escritura in favor of the Bank, the blame is on Cantero, who did not know how to play his part, because I have been able to bring the old man to this office three times, and Cantero shouted at him, and therefore he did not wish to sign" (Defts. Exh. 39, Rec., pp. 380, 264).

And again:

"In order that my work may be complete in this matter, I beseech you that you may give me a check for 1000 pesos because I intend to make a present to the wife of the old man and to other women who have helped in order that he might sign that which he had signed."

(Deft.'s Exh. 40, Rec., pp. 380, 264.)

And the conveniently peripatetic witnesses, Lontoc and Duenas, reveal themselves and their methods with equal frankness, thus:

"You have promised us that whenever the escritura in favor of the Bank would be signed by the old man that we should receive thousands of pesos. Not only has the escritura referred to been signed two or three times, but also the liquidation of the account with said Bank of which we have not talked as the old man has said that he has not issued checks for more than 117,000 or 119,000 pesos and as we have already signed the conformity for 149,000

pesos we should call your attention to the fact that it is not necessary for us to secure the signatures in order that after difficulties of a thousand demons we should not receive more than the small alms which you gave after accomplishing that which you and Regidor desired.

\* \* \* \* \*

If the escritura is not yet well done, it is not our fault as we have told you and as it has been signed two or three times by the old man and by us as witnesses."

(Deft.'s Exh. 42, Lontoc to Ramirez,  
Rec., pp. 381, 382, 264.)

And thus:

"As you well know that we have abandoned our own affairs in order to always accompany the old man to secure that which we desire, and as we have already done."

(Deft.'s Exh. 43, Rec., pp. 381, 264.)

Regidor's letter to the Bank manager of April 21st, 1903 (Deft.'s Exh. 10, Rec., pp. 346, 143, 144), shows how the two coöperated in handling Martinez' account as they saw fit. Regidor writes in regard to objections to a cheque for 4000 pesos given to one Papa, and adds:

"Limit yourself solely to refusing payment  
"of the cheque referred to, saying that it is  
"not current, and without giving explanations."

Brown followed these instructions and refused payment, although Papa "offered to make a present of 500 pesos to cash the check," as he himself

testified (Rec., pp. 246, 247). As this was only 12½%, the tribute was apparently not large enough.

The execution of numerous counterparts of the instrument of February 12, 1904, leaving the date blank, prepared by Regidor, typewritten by Cantero, and executed by the Bank manager in his official capacity, all after the adjudication of incompetency, was one of the last acts of the conspirators, after their further spoliations were prevented by the protecting arm of the Court. (See Test. of Cantero, Rec., pp. 141-143; Deft.'s Exhs. 16-23, Rec., pp. 352-356.) Why the evident purpose to date them back, prior to the adjudication of incompetency, was not carried out, does not appear.

How closely Martinez was watched appears from Deft.'s Exh. 98 (Rec., p. 463), described by Cantero as "one of the reports on notes delivered to Mr. Regidor when he gave the commission to hunt up gambling promissory notes" (Rec., p. 155), in the handwriting of Rodriguez, who testified himself in corroboration (Rec., pp. 256, 312).

He (Rodriguez) writes:

"On Sunday February the fifteenth, Martinez gambled and paid for what he lost with a solitaire diamond ring, which he bought last week from a broker for 1,600 pesos, paid by check on Monday the sixteenth.

Find out the name in the note of 20,000 pesos for which he paid 8,000 when the American attorneys presented it to him and see if he still has a promissory note for 6,000 and two notes for 3,000 which he has also paid; they must have some connection with the promissory note for P. 20,000 referred to and paid" (Rec., p. 463).

To cover their tracks as much as possible, the Bank manager addressed to Cantero his letters actually intended for Regidor and Regidor signed the initial "C" to his communications to the Bank manager (See Deft.'s Exhs. 102, 103, Rec., pp. 465, 466, and Test. of Contero, Rec., p. 156).

The history of these damning documents is interesting. First they were kept in a safe of which Regidor had the key; when the incompetency proceeding was brought, they were spirited away by putting them in Cantero's trunk, and taking them to the house of Azaola, a notary before whom many of the instruments were executed, and who was apparently one of the conspirators; then to the house of Vergarda, then back to Regidor's, where Cantero lived; then (on June 30, 1904) Gallegos, who shared Cantero's room, took the trunk away, and under orders from the Prosecuting Attorney brought it to his office, where it was opened in the presence of counsel for the Bank and for Martinez, and its contents examined and initialed (Test. of Cantero, Rec., p. 135; of Gale, Rec., p. 272).

The chief conspirators themselves joined in recording their self-crimination. Defendant's Exhibit 12 (Rec. p. 349) is a memorandum dictated by Regidor, typewritten by Cantero, and personally delivered to Brown the Bank manager at Regidor's house (Rec. p. 138). This was dated December 23, 1903, after the adjudication of incompetency. It directs the Bank manager how to doctor the books of the Bank, so as to lend as much plausibility as possible to the record of the transactions. It was acted upon a few days later, December 31st, 1903 (Rec., p. 120). Defendant's Exhibit 4 (Rec., p. 343) has already been com-

mented upon in our opening statement of facts. (See ante, p. 10.) It is sufficient by itself to show the fact and the essential methods of the conspiracy. One of the notes referred to in this memorandum is proved to have been endorsed to the Bank under circumstances absolutely negating the idea of actual payment. The endorser, Rosario, testified: "Mr. Regidor asked me as a favor that these pagares should be endorsed to me and that I should then endorse them to the Bank" (Rec. pp. 281, 357). These notes were given in renewal of a former void note for 24,000 pesos purchased by Regidor for 1,000 pesos (Rec. p. 231).

So far from there being no competent proof of the fraud and conspiracy, it is very rare that so much first hand documentary evidence of so dark and devious a fraud is created and preserved by the conspirators or found by the officers of justice.

Other phases of the conspiracy by way of fraudulent padding of the nominal consideration of the contracts sued on will be further discussed under Point .

The proof of intimidation has already been outlined (See ante, pp. 9, 11, 29) and need not be repeated in detail. There is ample and uncontradicted evidence that Martinez executed his obligations to the Bank under duress of threats, shouted by the Bank manager (Brown), Regidor and Cantero, that they would "throw him out of the window" or "send him to Bilibid," if he did not comply with their demands. A contract so executed is legally non-existent.

The Civil Code provides :

“Art. 1265. Consent given by error, under violence, by intimidation, or deceit shall be void.

Art. 1267. \* \* \* Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property \* \* \*.

In order to classify the intimidation, the age, sex, and status of the person must be considered.

\* \* \* \* \*

Art. 1268. Violence or intimidation shall annul the obligation, even if it should have been employed by a third person who did not take part in the contract.”

In the case at bar we have uncontradicted and corroborated evidence of threats of immediate physical violence and criminal prosecution, employed by a numerous band of scoundrels against one helpless old man almost if not quite in his dotage. On this ground also the contracts sued on are absolutely void.



## III.

**The Bank is affected by the frauds of Brown its manager and by his knowledge of the invalidity of the instruments in suit.**

Brown was the local manager in Manila of the plaintiff Bank, a Connecticut corporation. So far as the defendant Martinez was concerned, *Brown was the Bank*. It was for the Bank's interest and profit to get accounts, and to discount paper, and it was Brown's function as manager to get such business for the Bank. In all his dealings with Martinez and Martinez' account. Brown acted as the representative of the Bank, and it was only through Brown's official position and powers that the fraud was possible. As the agent of the Bank he had power to and did refuse payment of Martinez' cheques until the requisite tribute was paid to his confederate Regidor; as the agent of the Bank he intimidated Martinez into executing the various obligations to the Bank; by suing on these instruments the Bank has ratified and adopted its manager's transactions with Martinez, and the fraud with which they are tainted is a complete defense as against the Bank. Regidor also acted as the agent and representative of the Bank in investigating Martinez' solvency and in preparing the instruments executed by Martinez. If the money had actually passed to Martinez' physical possession and he had departed with it, and Brown and Regidor had then attacked him on the street and taken it away from him, that might be regarded as

their individual wrong, and not attributable to the Bank. But here the Bank manager has used the Bank's machinery to perpetrate his frauds, and the Bank which put him in a position enabling him to do so is responsible.

If authority be needed for so elementary a proposition the case of *United States v. State Bank*, 96 U. S. 30, is directly in point.

There through a fraud to which the cashier of the United States Sub-treasury at Boston was a party, a large sum of money was deposited in such Sub-treasury to the credit of another party when it actually belonged to the State Bank. The Bank sued in the Court of Claims and recovered. The United States appealed. The Court said:

"But surely it ought to require neither argument nor authority to support the proposition, that, where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property cannot be held by the United States against the claim of the wronged and injured party.

The agent was agent for no such purpose. His doings were vitiated by the underlying dishonesty, and could confer no rights upon his principal.

The appellee recovered below the amount claimed. A different result here would be a reproach to our jurisprudence."

If the United States could not retain money which had reached their treasury through the fraud of their agent, surely the plaintiff Bank in this case cannot be allowed to enforce alleged obligations obtained in its name through the fraud of its agent.

By suing on the obligations so obtained the Bank has adopted and ratified its agent's wrongful acts.

See *Wilson vs. Pauly*, 72 Fed., 129  
(C. C. A. 6th Circ., Taft, Lurton  
and Severens, JJ.).

The same result is reached by applying the doctrine of notice. Brown, the Bank manager, had actual knowledge of Martinez' mental incapacity and of the frauds and "insidious machinations" practiced upon him. His knowledge was notice to the Bank, which cannot now enforce obligations the invalidity of which must have been known to the one representative through whom the Bank dealt with Martinez.

That Brown may have defrauded the Bank also does not alter the situation.

See *Armstrong vs. Ashley*, 204 U. S.,  
272, at p. 283.

In any view of the case, it was through Brown's hands that the Bank acted, and the fraud with which they are defiled makes it impossible for the Bank to come into equity with the "clean hands" which equity requires.

## IV.

**The nominal consideration for the instruments sued is to a great extent illicit and fictitious.**

In his efforts to manufacture evidence of Martinez' alleged indebtedness to the Bank, the Bank manager, acting jointly and in collusion with Regidor, multiplied notes and securities to such an extent, and Martinez signed with such acquiescence whatever was presented to him, that it is difficult at the present time to unravel the tangle, and ascertain which of the notes involved are separate and original frauds and which are mere duplications and repetitions.

There are certain of the transactions, however, which can be traced through their tortuous course with some accuracy, and which will show sufficiently the true situation.

Manuel Ramirez, an accomplice of Brown and Regidor, was employed by them to look for and buy "pagares which Francisco Martinez lost in gambling" (Rec., p. 230). In April, 1903, he found a pagare of 24000 pesos in favor of one Felix Herrera, already overdue. This was then in the hands of one Mascuñana. Mr. Regidor told the holder that the pagare "was no longer of value because it was overdue and besides it had been won in gambling" (Rec., p. 231). As Martinez himself testified (Rec., p. 285), this loss was incurred at *Monte*, a prohibited game (Lichauco v. Martinez, 6 Phil. Rep. 594). Ramirez brought Mascuñana and Regidor together, and Regidor "purchased the note for 1000 pesos," making the payment "in his house in silver" (Rec., p. 231).

Ramirez then brought Martinez to Regidor, and "Regidor told him to renew each note, two pagares, one of 16,000 pesos and one for 8,000 pesos." These notes are defendant's exhibits 25 and 26 (Rec., pp. 357, 358). They were endorsed by Mascuñana, the nominal payee, to Rosario, and by Rosario to the Bank "as a favor," that is, without consideration (Rec., p. 281). For the 8,000 pesos pagare two separate notes for 4,000 and 5,000 pesos appear to have been subsequently substituted (See Deft.'s Exh. 12, Rec., p. 349). When it became necessary to manufacture some apparent consideration for the Germana loan on the books of the Bank, it was accounted for to the extent of 25,000 pesos by debiting these three notes against it. (Deft.'s Exh. 4, Rec., p. 344). It thus appears that the amount of the Germana loan was never paid to Martinez, but was nominally applied for the most part to take up notes for 25,000 pesos, the original consideration for which was illegal, and which were actually acquired for only 1,000 pesos.

Now, "contracts without consideration or with an illicit one have no effect whatsoever," (Civil Code, Art. 1275) and "the statement of a false consideration, in contracts, shall render them void" (Do. Art. 1276). Hence no suit can be maintained on the Germana transaction, under either of the instruments in which it figures. A false consideration is stated, and the real consideration is illicit. Where the consideration is illicit even in part, there can be no recovery unless the plaintiff proves the amount due upon a valid consideration. (*Lichauco v. Martinez*, 6 Phil. Rep. 594). Illegality of consideration is equally

a defense as against an assignee (*Palma v. Cañizares*, 1 Phil. Rep. 602).

The duplication of items began at the very inception of the relations between Martinez and the Bank. When the account was opened on January 30, 1903, with a credit of 30,000 pesos, two notes for that amount were given, one signed by Martinez alone, and one by him and his wife jointly (Rec., p. 132, Deft.'s Exh. 1, Rec. p. 342). As testified by Cantero (Rec., p. 132) :

“Mr. Regidor took charge of the same and he made Mr. Martinez believe that one of the promissory notes was torn up, and then he, in the presence of Martinez, tore off the signature of Martinez to make him believe it and a few days afterward he made him sign the same document again.”

No claim appears to be made by the Bank specifically on account of this loan, so it must be inferred that it was included in and superseded by either the Germana loan for the same amount, or the loans of 110,000 pesos referred to in the instrument of June 15th, 1903. On that date the total obligations of Martinez to the Bank did not exceed 135,000 pesos, according to the plaintiffs' own evidence (Rec. p. 120). This was made up of the following items:

Account current as per pass book,	97,000 pesos
Loan account,	9,000 pesos Mexican
Loan account,	13,000 gold

The 30,000 pesos Germana loan must therefore have been regarded at that time either as included in some larger item, or as not an existing

obligation. In the face of this state of facts, the instrument of June 15, 1903, recites an obligation far greater in amount, viz:

Promissory notes,	110,000 pesos
Germana loan,	30,000 pesos
Varadero mortgage,	13,000 gold
Other loan,	9,000 pesos

These irreconcilable figures show that there must have been duplication of charges, especially in view of the manner in which the Germana loan is proved to have been juggled with on the books. Under these circumstances, it was certainly incumbent upon the Bank to prove how much money was actually paid to Martinez, or on his order for his benefit. This was not done; the only evidence of consideration, aside from the instruments themselves (shown to be at variance with the facts), was the testimony of the Bank manager who succeeded Brown after all the transactions involved were past history, and had no personal knowledge of them, and the doctored books themselves.

It may be that Martinez did receive some money himself in cash; or it may be that some was paid out on his cheques on legitimate considerations; but it is quite evident that he never received or had the benefit of anything like the amount sued for and awarded, and that the plaintiff has not borne the burden imposed by law of segregating the true and valid from the false and illicit consideration. The action of the Trial Court in dismissing the complaints was therefore the only proper disposition to make of the suits.

## V.

**The contract sued on in the Germana case (No. 79) is not an existing obligation.**

It was recognized by the Philippine Supreme Court that the instrument of May 2nd, 1903, created no additional obligation not covered by the instrument of June 15th, 1903. But that Court failed to recognize that the instrument of May 2nd, 1903, was on the face of the papers wholly superseded and satisfied by the later instrument. The earlier instrument was a pledge of the steamer to secure a loan of 30,000 pesos with possession transferred to a depositary representing the pledgee, and with a qualified power of sale in the pledgee under the law (Civil Code, Art. 1872). The latter instrument provides for and effects an "extinction" of this former obligation and substitutes for it a sale (with right of re-purchase) of the steamer by Martinez to the Bank, at the price fixed or to be fixed in the partition, which was 35,000 pesos (Rec., p. 425). Therefore, the relief given to the Bank in No. 79, namely, a sale of the steamer, is absolutely contrary to the Bank's own agreement of June 15th, 1903, and has no legal basis. Moreover, the Germana loan was further extinguished on the books of the Bank on December 31st, 1903, by applying to it a cheque for 30,000 pesos executed by Martinez on June 21st, 1903, included in the total overdraft of 158,378.27 pesos as of June 9th, 1904, testified to by the present Bank manager (Rec., p. 115). It would seem that when an obligation has been "ex-

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tinguished" twice, it is rather too late to enforce it a third time by a judicial sale.

This is not a question of mere procedure or remedy. The Bank, by its contract of June 15th, 1903, has agreed to buy the Germana for a price which appears by reference to the partition to be 35,000 pesos, and extinguish its lien thereon of 30,000 pesos. Suppose that during the litigation the steamer has deteriorated in value. A judicial sale might produce much less than 30,000 pesos, and leave a substantial deficiency against Martinez instead of the balance in his favor shown by the later contract, which the Court below thus allows the Bank to repudiate, for no reason in law or equity disclosed by its opinion.

The Appellant is thus entitled to an absolute reversal and dismissal of the complaint in No. 79 on this one ground, irrespective of all other questions in the case, and of the result of No. 80.

## VI.

**The judgment awarded in No. 80 is not within the issues or justified by the facts pleaded or proved, and the plaintiff is entitled to no relief therein.**

The plaintiff in its complaint in No. 80 alleged the instrument of June 15th, 1903, to be, "in fact and in law, a mortgage given to secure the payment of the items of debt" therein recited (Rec.,

p. 49). It appears from the barest inspection of the instrument that it has none of the characteristics of a mortgage. It is, by its express terms, an agreement for the extinction of the Bank's claims against Martinez and against the property of the "conjugal partnership of Martinez-Ilustre" by a conveyance, to be made in the future, of Martinez' individual share in such property when partitioned, to be taken by the Bank at the prices to be agreed on in the partition, with a right of re-purchase in Martinez, and the balance in his favor to be placed at his disposition in account current with the Bank (Rec., pp. 49-51).

The Philippine Supreme Court necessarily held that in legal effect this instrument was not a mortgage, but was "a promise to sell real estate upon certain terms, and contemplates a subsequent contract of sale which should contain the terms stated in this document" (Rec., p. 98). It further held that the instrument of February 12th, 1904, (void because executed after Martinez was placed under guardianship), "clearly indicates the view which the Bank had of the nature of the contract of the 15th of June, 1903," and states "substantially the real obligations which Martinez incurred by this contract," and then decreed specific performance by the execution of such an instrument, "*omitting therefrom, however, the steamer Germana*" (Rec., pp. 98, 99).

This instrument of February 12th, 1904, is found in the Record at pp. 78-84. It recites a then indebtedness of 177,000 pesos, without specifying any items. This exceeds by over 17,000 pesos the amount found due by the judgment under review. It then conveys to the Bank various properties of an aggregate agreed value of 192,-

500 pesos, including the Germana at a valuation of 35,000 pesos.

A tabular statement of these figures shows these discrepancies very strikingly:

Amount found due by judgment .....	159607.81 pesos
Indebtedness recited in Instrument of Feb. 12, 1904	177000.00    "
Aggregate valuation of properties .....	192500.00    "

This instrument of February 12th, 1904, does not include Martinez' property at Batangas covered by the instrument of June 15th, 1903 (Rec., p. 50), but not included in the partition of September, 1903 (Rec., p. 429), the value of which is therefore still unfixed. It limits the time for repurchase to May 7th, 1904, a period of less than three months, instead of the six months from the date of the future conveyance contemplated by the instrument of June 15th 1903 (Rec., p. 50). It provides that Martinez may exercise his right of repurchase by making monthly payments of 4000 pesos, and that the Bank shall extend the period for repurchase every six months, so long as the monthly payments are regularly made. If Martinez should default in the monthly payments, so that his right of repurchase lapses, then his partial payments are to be repaid to him by the Bank. This provision shows that the transaction was regarded by the Bank at the time as a satisfaction of Martinez' obligations, not as security therefor. The instrument also contains a dangerously inconspicuous provision that all obligations contracted by Martinez after June 15th, 1903, "and which

may be *in the possession* of the International Banking Corporation on this day," should be charged against Martinez' account current, thus enabling the Bank to use against him at their face value his various gambling obligations picked up at a bargain by the Bank's agents all over Manila.

The exclusion from this instrument of the Batangas property, and the further exclusion by the decree of the Germana, from the specific performance adjudged by the Court below, greatly lessens the amount to be placed to Martinez' credit by the Bank, and thus very substantially changes the mutual obligations of the parties. The decree, therefore, provides not for a specific performance of the contract sued on, but for the performance of a new and different arrangement never entered into by the parties, but carved out by the Court on its own motion. This alone surely requires a reversal in No. 80.

This is not a case where the Court has merely granted the wrong relief or too much relief. It is rather a case where the Record shows that the plaintiff is not entitled to any relief at all, even upon the most favorable view of the pleadings and evidence. A vendee cannot enforce specific performance of a contract of sale without tendering performance on his part. Here the vendee, so far from even signifying willingness to perform its obligations under the agreement, has expressly repudiated all such obligations, by declaring on the contract as a mortgage and seeking to foreclose it. The Court below did not even attempt to read into the Record any offer of performance by the Bank, nor can any such be found. Moreover

the performance decreed was purely unilateral, and performance by the plaintiff was neither required nor assumed. With no performance pleaded, proved, offered, or suggested by the plaintiff, there is surely no basis for adjudging performance by the defendant.

The future conveyance contemplated by the instrument of June 15th, 1903, was to be executed by both parties, as shown by the instrument of February 12th, 1904. The plaintiff therefore, in any event, should have tendered such an instrument as it deemed proper, already executed by itself.

The beginning of the suit cannot be regarded as a demand or tender, since the plaintiff did not thereby demand specific performance, but other relief of a different and inconsistent character. If no demand could be made on Martinez, it should have been made on his guardian, to whom also the tender of performance should have been made.

## VII.

**The Bank has violated the Court's orders and is entitled to no consideration.**

The adjudication of Martinez' incompetency was made on November 14th, 1903 (Rec., p. 373), and the Bank had notice of the proceeding long before. All persons were forbidden by this decree

from interfering in any way with Martinez' property. It was expressly admitted on the trial that the real estate agent of the Bank took possession of Martinez' property on December 4th, 1903 (Rec., p. 297), three weeks later. This admission was subject to correction, but no other date was ever proved. On the contrary, the plaintiff's own witnesses confirmed the admission. Mr. Lahesa, an attorney for the Bank, who also intervened on behalf of the Bank in the incompetency proceeding, testified that he engaged Mr. Wolfson to take charge of the property and collect the rents (Rec., p. 299), and that two or three days after this conversation, "Mr. Wolfson began to collect the rents" (Rec., p. 302). Wolfson's own books show that the first rent collected by him was on December 5th, 1903 (Rec., pp. 307, 516). Lahesa himself was first brought into the matter by a letter of November 24th, 1903 (Rec., p. 311). Wolfson specifically admits that he knew of the judgment of incompetency, and applied for leave to appeal therefrom (Rec., p. 308). It is perfectly evident, in spite of his general denials, that he relied on getting such leave and obtaining a reversal, and in the interval simply took possession regardless of the outstanding judgment.

It also appears from the plaintiff's own exhibits that on December 17th, 1903, one Mathews "took charge of the steamer Germana as depositary appointed for this purpose by the International Banking Corporation" (Plff.'s Exh. D, Rec., p. 337). This was equally in violation of the judgment.

By the very terms of the contract of June 15th, 1903, upon which the Bank is suing, it

was not presently entitled to the possession of any of the properties affected. It was an executory contract, not an executed transfer. The Bank's action in taking possession at any time, before or after the declaration of incompetency, was simply a high handed ouster, without any justification, and the judgment of the Trial Court for a return of the possession of the property and payment of the rents and profits wrongfully collected by the Bank was wholly proper. The Bank's possession was manifestly acquired and held in bad faith, and under the Civil Code (Art. 455)

“A possessor in bad faith shall pay for the fruits collected, and for those which the legitimate possessor could have received, and shall only have a right to be reimbursed for the necessary expenses incurred for the preservation of the thing.”

Such expenses were allowed by the Trial Court in the Germana case (Rec., p. 20), but in the other case there was no evidence of the necessity of the disbursements and the Court properly gave judgment for the gross rents collected (Rec., pp. 87, 208, 209).

### **Summary of Appellant's Contentions.**

We respectfully submit, on behalf of the appellant, that it appears from the Record of this case, and the legal principles applicable thereto:

1. That, at the time of the transactions in suit, Martinez was legally incompetent, or in any event so enfeebled mentally and physically as to be easily influenced and defrauded;

2. That the contracts or obligations sued upon were obtained from Martinez by the Bank's agent and manager by "insidious machinations," fraud and intimidation, which are imputable to the Bank and of which the Bank had notice;

3. That the consideration stated in the contracts is false, that the actual consideration was to a great extent illicit, and that the plaintiff has failed to prove to what extent the actual consideration was valid;

4. That, even assuming the contracts to be valid, the Germana contract was merged in and extinguished by the later contract, and as to that contract the plaintiff has repudiated its own obligations thereunder and is not entitled to specific performance or any other relief.

5. That the plaintiff wrongfully took possession of Martinez' property after he was adjudged incompetent, and that his estate is entitled to its return and to judgment for mesne profits.

### CONCLUSION.

**The judgments of the Philippine Supreme Court should be reversed and those of the Court of First Instance affirmed.**

Respectfully submitted this fifth day of December, 1910.

PAUL FULLER,  
FREDERIC R. COUDERT,  
HOWARD THAYER KINGSBURY,  
Counsel for Appellant,  
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# Supreme Court of the United States

OCTOBER TERM, 1910.

Office Supreme Court, U. S.  
FILED.

MAR 13 1911

JAMES H. McKENNEY  
Clerk

No. 79.

MARIANO MARTINEZ, Administrator of  
deceased,

*Appellant,*

*vs.*

THE INTERNATIONAL BANKING CORPORATION.

No. 80.

MARIANO MARTINEZ, Administrator of Francisco Martinez,  
deceased,

*Appellant,*

*vs.*

THE INTERNATIONAL BANKING CORPORATION.

APPEALS FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF IN REPLY FOR APPELLANT.

PAUL FULLER

FREDERIC R. COUDERT,

HOWARD THAYER KINGSBURY,

*Counsel for Appellant,*

No. 2 Rector Street, New York.



# Supreme Court of the United States,

OCTOBER TERM, 1910.

MARIANO MARTINEZ, Administrat-  
or of Francisco Martinez, De-  
ceased,

Appellant,

*vs.*

THE INTERNATIONAL BANKING  
CORPORATION.

Nos. 79 and 80.

## **Brief in Reply for Appellant.**

This brief in reply is submitted by leave of Court and in response to questions put by the Court upon the oral argument. It will be directed to two questions only:

- A. The jurisdiction of this Court;
- B. The relation of the Bank to its Manager's frauds.

### **A**

#### **This Court Has Jurisdiction.**

The appellee questions the jurisdiction of this Court upon two grounds, claiming (1) that the

jurisdictional amount is not involved, and (2) that the judgments appealed from are not final. Neither of these objections is well founded.

In No. 80 the judgment appealed from adjudges a liability of more than 150,000 pesos.

In No. 79 the liability adjudged, with interest to the date of the allowance of the appeal, exceeds 38,000 pesos. The counter claim for the return of the Germana involves a value of 35,000 pesos. The sum of these two items is 73,000 pesos (\$36,500).

The appellee's contention that there was no formal dismissal of this counter-claim by the Philippine Supreme Court is a mere quibble. That Court adjudged that the vessel be sold to satisfy the plaintiff's claim, and while a formal dismissal of the counterclaim for the return of the vessel might have been appropriate, it was unnecessary, since the vessel could not be returned to the defendant if it were sold for the benefit of the plaintiff.

There is no foundation for the appellee's assertion that the value in controversy must appear upon an inspection of the pleadings. It is quite sufficient if it appear any where in the Record, as it does in this case.

As this Court said in *Elgin v. Marshall*, 106 U. S. 578, at p. 580:

“Undoubtedly, Congress, in establishing a rule for determining the appellate jurisdiction of this court, among other reasons of convenience that dictated the adoption of the money value of the matter in dispute, had in view that it was precise and definite. Ordinarily, it would appear in the pleadings and judgment, where the claim must be stated and determined; but where the recovery of specific

property, real or personal, is sought, affidavits of value were permitted, from the beginning, as a suitable mode of ascertaining the fact, and bringing it upon the record. *Williamson v. Kincaid*, 4 Dall. 20; *Course v. Stead*, *id.* 22; *United States v. Brig. Union*, 4 Cranch, 216."

In this case the recovery of specific personal property, to-wit, the steamer *Germana*, was sought by the defendant. Its value appears from the Record in the agreement of partition, to which both the Bank and Martinez were parties, and which is, therefore, binding upon the Bank. (Rec., pp. 425, 429.) No further proof by affidavit would therefore appear to be necessary.

On the question of finality the authorities are conclusive against the appellee's contentions. In No. 79 the decree is substantially one of foreclosure and sale. Such a decree has been expressly held by this court to be final.

See *Whiting v. U. S. Bank*, 13 Peters, 6, at page 15.

Nothing remained for the Court below to do except to carry out the judgment. The direction to sell the *Germana*, if the judgment was not otherwise paid, was absolute, and the sale would not even require confirmation by the Court. (Rec., pp. 32, 36.)

In No. 80 the judgment appealed from settled the whole law of the case and fixed the rights of the parties, leaving nothing for the Court below to do except of a ministerial character. The dispositive portion of the judgment was an absolute direction for the specific performance of the

agreement sued on, by the execution of an instrument in the form specified by the Court.

It was held by this Court in *Thomson v. Dean*, 7 Wall., 342, that where a "decree directs the performance of a specific act and requires that it be done forthwith," such decree is final for the purpose of appeal to this Court, even if it leaves accounts between the parties to be adjusted pursuant to the decree.

The general rule is further stated in the leading case of *Forgay v. Conrad*, 6 How., 201, at page 204, as follows:

"And when the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed."

To the same effect is *French v. Shoemaker*, 12 Wall., 86, at p. 98, as follows:

"Unquestionably the whole law of the case before the court was settled by the Chief Justice in that decree, and as nothing remains to be done, unless a new application shall be made at the foot of the decree, the court is of the opinion that the decree is a final one, as it has conclusively settled all the legal rights of the parties involved in the pleadings."

A later application of the same rule is found in *Hill v. Chicago & Evanston R. R. Co.*, 140 U. S., 52.

The fact that the Court directed that there be credited upon the amount adjudged due (a) the net receipts from the real estate involved in the action, and (b) the proceeds from the sale of the Germana, is immaterial, and the suggestion that these credits might reduce the value in controversy below the jurisdictional amount is groundless.

It is not to be supposed that the Germana would bring at a forced judicial sale more than its value as agreed upon in the instrument of partition, viz., 35,000 pesos. (Rec., p. 425.) The amount of the gross rents collected by the plaintiff was found by the Trial Court to be 29,281.93 pesos (Rec., p. 87). The net rents would necessarily be less than the gross rents. If both of these amounts be deducted in full from the amount of the judgment in No. 80, there would still remain an adjudicated liability of over 95,000 pesos, far in excess of the jurisdictional requirement.

The reservation to the defendant of the right to question the expenses incurred by the plaintiff in connection with its administration of the real estate (Rec., p. 99), does not derogate from the finality of the decree. Such question is purely incidental, does not affect the legal rights of the parties as adjudged by the Court, and is at most a severable question under the doctrine of the authorities above cited. The deduction of the proceeds of the sale of the Germana is obviously a purely ministerial act requiring no judicial consideration.



As pointed out in our former Brief (p. 20), and also upon the oral argument, these two cases are so inextricably connected that even if there be any technical objection to the jurisdiction in No. 79, nevertheless the review of No. 80 must necessarily involve a review of No. 79 also, and upon a reversal in No. 80 the mandate could be so framed as to prevent any injustice being done through a technical dismissal of the appeal in No. 79.

For the convenience of the Court we quote in full the section of the Organic Act, upon which is based the jurisdiction of this Court on appeal from the Supreme Court of the Philippine Islands:

“Sec. 10. That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes and proceedings now pending therein, or hereafter determined thereby, in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question, and such final judgments or decrees may and can be reviewed, revised, reversed, modified or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as

the final judgments and decrees of the Circuit Courts of the United States."

32 U. S. Statutes, at p. 695, quoted in *De la Rama v. De la Rama*, 201 U. S., at p. 305.

It is manifest that in these cases, upon any construction of the plaintiff's causes of action, the substantial "value in controversy" is more than twice the jurisdictional amount, and that all the substantial rights of the parties are finally determined by the judgments appealed from. The importance to the twelve million inhabitants of the Philippine Islands of the right of appeal to this Court is apparent from various recent cases in which, after long litigation, justice has been finally attained by the exercise of such right, and this recourse should not be taken away or impaired by any refined subtleties of technical procedure.

## B.

**The Bank cannot enforce the agreements on which this suit is brought because they were procured by the frauds of its Manager.**

The essential facts in this case are not really in dispute and are altogether manifest from a reading of the record. The fraudulent acts of Brown and Regidor, by which Martinez was so completely fleeced, were fully discussed in the

former Brief and at the bar and no further commentary thereon is necessary.

The one remaining question is whether, in view of all these facts, the Bank can now come into equity with clean hands and enforce against the estate of Martinez the two agreements sued upon.

The situation of the Bank is as follows:

The International Banking Corporation, a Connecticut Company, is seeking to enforce in equity an agreement made with the administrator's intestate, Francisco Martinez, on June 15, 1903 (Rec. p. 49), by which Martinez agreed to convey to the Banking Corporation fourteen parcels of real estate, one steamer, his interest in certain other properties belonging to the conjugal partnership of Martinez and his deceased wife, and his usufruct in certain property set aside to his son. This agreement recites that it is "for the extinction of said obligations (recited in the paper), "and its (the Bank's) assistance in the "partition of the property of the conjugal partnership" (Rec. pp. 49, 50). The Bank obligates itself to place to Martinez's credit in account current "any excess of money which may result "in my (his) favor from the foregoing obligations" (Rec. p. 50). The Bank claimed that the instrument was in effect a mortgage and prayed its foreclosure and a judgment for any deficiency that might result from the sale (Rec. p. 49).

The Bank at the same time sought to enforce a pledge of the steamer under an earlier agreement (May 2nd, 1903), being one of the obligations which the instrument of June 15th, 1903, was designed to extinguish.

The first requisite for such an appeal to equity, is that the agreement shall have been honestly ob-

tained and that the plaintiff shall be free from any taint of bad faith in its procurement.

The contract was procured on behalf of the Banking Corporation and executed by Robert Wemyss Brown "*in his capacity* as directing "agent to (at) Manila of the International Bank-  
"ing Corporation, as appears from the proper "instrument of power of attorney" (Rec. p. 51).

So far from showing that this agreement procured on its behalf by its "directing agent" or general manager was founded in good faith and honestly procured, the Record shows, and the arguments together with the main brief have demonstrated, that it was the culminating step in a fraudulent and hitherto successful conspiracy between the managing agent of the corporation and others to despoil Martinez of his entire fortune.

The plaintiff seeks refuge in the plea that it is not to be made liable for the fraud of its agent, unless actual knowledge of and conscious participation in such fraud is brought home to it as a separate entity.

The first answer to this plea is that no one is seeking to impose a liability upon the Bank; the Bank is the actor, and is seeking to enforce an agreement procured in its behalf and executed by the very agent whose act in so doing it ratifies and rests upon by the present suit in equity to enforce the agreement.

The Bank cannot adopt and ratify the act of the agent in executing the agreement, and while seeking to enforce it, escape the consequence of the fraud by which the agreement was induced.

The instruments sued on being themselves the result of fraud, the Bank cannot enforce them whether or not its directors had knowledge or notice of the fraud.

But even were the administrator of the intestate Martinez seeking a recovery against the Bank, with the burden of the affirmative resting upon him to charge the Bank with the fraud through which his intestate was despoiled, (which is not the case), that affirmative would be satisfactorily sustained by the proof of the Bank Manager's fraudulent manoeuvres in procuring the agreement now in question and in all the transactions preceding it and contemporaneous with it.

The knowledge and the actual participation of the agent in the fraud which culminated in wresting from Martinez the agreement now before the Court is abundantly established; the fact is undeniable that he procured the agreement for the benefit of the Bank, within the scope of his employment as manager or "directing agent" of the business of the Bank, in sole charge of its Branch at Manila, six thousand miles from the home office of the Bank in Connecticut, and clothed with ample powers, commensurate with the necessities of a banking business to be carried on daily at a distance from the Board of Directors which rendered consultation impossible and immediate continuous action of the agent imperative.

It was suggested upon the argument that the Bank itself had suffered from the frauds of its Manager instead of deriving any illicit gains therefrom. This is not the case. The only specific evidence of the amount claimed to be due from Martinez to the Bank was that of a bank employee who entered the service of the Bank in February, 1904 (Rec., p. 116), and had no personal knowledge of the transactions involved (Rec., p. 117). The figures were made up from the books of the Bank, which as shown in

our former Brief (p. 33), were flagrantly doctored by Brown under Regidor's instructions. The checks which this witness produced and which are relied on to show the payment of money to Martinez or on his order (Rec., pp. 124-128) only amount to about 120,000 pesos, excluding from this computation the check for 30,000 pesos (Rec., p. 129), which merely transferred this amount from the loan account to the overdraft account. We have been unable to find in the Record any basis for fixing the amount of the alleged liability in No. 80 at 159,607.81 pesos, for which the Philippine Supreme Court gave judgment, except the allegation in the complaint (Rec., p. 48). There is no evidence of the actual payment of the greater part of the checks.

Since the whole transaction is tainted with the frauds of the Bank Manager, committed in his administration of the Bank's affairs, it is immaterial whether the Bank actually received any illicit pecuniary profit. But if, in any view of the case, this should be regarded as relevant, it is manifest that the Bank by a total outlay which does not appear to have been more than about 120,000 pesos, secured from this defenceless victim of senile decay obligations purporting to secure some 200,000 pesos. It is now seeking to enforce these obligations, which amount to nearly twice the fund which was actually furnished to the old man by the Bank Manager, to create a source of plunder and to make possible the whole contemptible swindle.

The legal doctrine applicable to this state of facts is not doubtful nor is it far to seek. No principal can reap profit by reason of the fraud

of its agent. It is no answer to this to say that the principal will not be charged with knowledge of the fraudulent act of the agent because the agent was not employed to commit a fraud, and will not be presumed to have disclosed his own fraud to his principal. This doctrine, while sound in its proper application, has no relevancy here. Had Brown committed an independent fraud, the Bank would in nowise have been chargeable. But, where the Manager of a Bank, by a series of fraudulent transactions creates an apparent indebtedness and uses such indebtedness for the purpose of procuring, on behalf of the Bank, contracts or transfers, such as those in question, the Bank cannot come into equity with clean hands for the enforcement of such instruments. No principal is allowed thus to take advantage of the fraud of his agent.

The procuring of the instruments in question was the act of the Bank Manager and well within the scope of his authority. Suing upon them is a ratification and approval of these instruments and consequently of every act leading up to their making.

In considering who should be made to suffer the losses consequent upon the fraudulent conduct of the Bank Manager, the established principle should be borne in mind that when one of two innocent persons must suffer by the fraud of a third, he shall bear the loss who enabled the third party to do the injury by holding him out to the world as his agent—competent and fit to be trusted, and thus warranting his fidelity and good conduct in all matters entrusted to his agency.

“It is the common question every day at “Guildhall,” says Mr. Justice Buller in Fitz-

herbert v. Mather, 1 T. R., 16, "where one of  
 "two innocent persons must suffer by the  
 "fraud or negligence of the third, which of  
 "the two gave credit?"

Lord Holt in Lane v. Cotton, 12 Mod., 472, 490,  
 puts it thus:

"For when a trust is put in one person,  
 "and another whose interest is entrusted to  
 "him is damnified by the neglect of such as  
 "that person employs in the discharge of that  
 "trust, he shall answer for it to the party  
 "damnified."

The New York Court of Appeals commenting  
 on this rule says:

"The idea that the responsibility of a  
 "principal for the frauds of his agent rests  
 "in all cases upon the ground that he has in  
 "some way, either actually or apparently,  
 "authorized the fraudulent act, *or has re-*  
 "*ceived the benefit of the fraud*, must be  
 "given up. \* \* \* This liability [for ne-  
 "gligence] and that for fraud belong to the  
 "same class, and rest upon the same reason.  
 "That reason is that every person employing  
 "an agent is under obligation to pay some  
 "regard to the diligence, skill and integrity  
 "of the agent he selects, and to his fitness to  
 "perform the duties with which he is  
 "charged."

Griswold v. Haven, 25 N. Y., 595  
 (600-601).

This Court has declared the same rule:

"It is no answer to this liability [of the  
 "principal] to say that the act done by the  
 "agent was of a fraudulent character, and  
 "that the principal did not authorize the com-  
 "mission of a fraud \* \* \* he is liable in



“a civil suit if the fraud be committed in the  
“transaction of the very business in which  
“the agent was appointed to act.”

Hoover v. Wise, 91 U. S. at p. 311.

The transaction of the business was the management of the bank, the securing of deposits, the opening of credits, the discounting of notes—this the manager was empowered to do; if he did it fraudulently, the Bank cannot take advantage of the fraud.

The purpose of the agreement was to get from Martinez for the benefit of the Bank property much more than sufficient to reimburse the Bank for moneys paid out supposedly to Martinez, but which in reality never reached Martinez and were largely diverted by the Bank Manager to his own use and that of his accomplices, and largely to pay notes which constituted no legal obligation against Martinez, but which were utilized by the Bank Manager as the medium of his own illicit gains through the agency of a Bank account over which he had supervision.

All this he did in the business of the Bank and for its profit as well as his own.

The well-established doctrine that notice to an agent, or the knowledge of an agent, while acting within the scope of his authority and in reference to a matter over which his authority extends, such as the agreement upon which the Bank is here suing, is imputable to the principal, properly rests upon the legal identity of the agent with the principal, rather than upon any presumptions of disclosure. The agent within the scope of his authority, is, for the time being, the principal himself, or at the least his *alter ego*.

This doctrine applies not only to principal and agent, when the principal is an individual, to the extent that the agent's knowledge of a fraud sufficient to vitiate the agreement will be imputed to the principal, but it applies with even more cogency to the agents of corporations.

*The rule as applied to individuals.*

Upon the general rule as applied to individuals we cite the following authorities:

"I agree that notice to a director, or knowledge derived by him, *while not engaged officially in the business of the bank*, cannot and should not operate to the prejudice of the latter. This is clear from the ground and reason upon which the doctrine of notice to the principal through the agent rests. The principal is chargeable with this knowledge *for the reason that the agent is substituted in his place* and represents him in the particular transaction; and as this relation, strictly speaking, exists only while the agent is acting in the business thus delegated to him, it is proper to limit it to such occasions."

Bank of U. S. v. Davis, 2 Hill (N. Y.),  
451, per Nelson, C.J.

A note was sold by the payee thereof to the plaintiffs, Cummings & Co. The transaction was had with an agent of the plaintiffs, to whom the payee stated that the consideration of the note was the sale of a slave, who was unsound though sold as sound. Held, that this knowledge of the agent must be imputed to the principal. (Citing *Story on Agency*, 140-451; *Kemp v. Rowley*, 2 An., 319; *Lupin v. Clifton*, 17 La., 158; *Maurin v. Chamber*, 16 La., 210).

*Cummings & Co. v. Harsabrant*, 14 La. Ann., 711 [1859].

See also *Fetter v. Field*, 1 La. Ann., 80.

An action was brought by the tutrix of two minor children for the restitution of certain hypothecary rights released by their former tutor. Rowly, the owner of the property mortgaged, upon the release of the lien, mortgaged it to a third party, Coxe. The Court says:

“The agent of Coxe was a party to the act  
“of the mortgage, executed before the same  
“officer and at the same time with the release,  
“and knowledge in him of the whole transac-  
“tion is proved beyond question, which binds  
“his principal.”

*Kemp v. Rowly*, 2 La. Ann., 316, 319.

Where an agent sells goods knowing that the purchaser intends to use them in violation of law, his act is the act of the principal, and notice to him of any facts affecting the character of the act of sale affects the principal.

*Suit v. Woodhull*, 113 Mass., 391,  
citing

*The Distilled Spirits*, 11 Wall., 356,

which held that if a purchasing agent was aware that certain liquors bought for his principal had been removed from a public warehouse in fraud of the revenue laws, the principal was bound by the agent's knowledge.

*The Rule as Applied to Corporations.*

There is good reason why this rule applies with particular force to corporations. From their very nature, the functions of a corporation can only be exercised through the medium of agents by whom or through whom all corporate executive action must be performed, and to whom all notice to the corporation must come. As a consequence notice to the agents of a corporation with reference to matters to which their authority relates is the only possible notice to a corporation and the knowledge of such agents is the knowledge of the corporation.

The rule is peculiarly applicable in the case at bar, where the Branch of the Bank at Manila was without any President or Board of Directors within six thousand miles, and was in absolute charge and control of a delegate of the corporation, entrusted with its entire and absolute management as "directing agent" (Rec. p. 51). He was, in Manila, as Counsel for the Corporation referred to him on the argument, "The Bank."

Among the authorities in support of this doctrine are the following:

Where the owner of a vessel, chartered to another, was sued by an incorporated Railroad Company for services rendered while the vessel was under such charter, the question arose whether the Railroad Company was chargeable with knowledge that the vessel had been so chartered, the Secretary of the Company being in possession of such information.

"It is said that the knowledge of the charter party by the Secretary of the Company,  
"and the conversations in the course of these

“transactions which passed between him and Hoffman cannot affect the corporation.

“This proposition we cannot recognize.

“The official capacity of the Secretary, etc., is not disputed, and the matters in which he acted appear to have been within the scope of his employment and in the usual course of the Company’s business *which was of such a nature as necessarily to be conducted through servants and agents*, and impossible to be carried on in its details by the direct action of its board of directors.”

Pontchartrain R. R. Co. v. Heirne, 2 La. Ann. 129.

A bank cashier, acting as such and also acting as attorney in fact for a depositor, loaned the money of the bank to the depositor upon collateral which the depositor held as trustee. Held that the knowledge of the cashier was imputable to the bank, which was held responsible for the trust funds so misused.

Loring v. Brodie, 134 Mass. 453.

“A bank or other corporation can act only through agents and it is generally true, that if a director who has knowledge of the fraud or illegality of the transaction acts for the bank, as in discounting a note, his act is that of the bank and it is affected by his knowledge.”

National Security Co. v. Cushman, 121 Mass. 490,

so quoted in *Innerarity v. Mercht. Nat’l Bank*, 139 Mass. 332, where the distinction is made that where a director deals with the bank on his own account, offering his own note for discount or ap-

plying for a loan on collateral of which he asserts the ownership, he is acting as a stranger to the bank and adversely to it, and his knowledge of his own private affairs cannot in reason be imputed to it.

This distinction, the only sound one which can ever relieve a corporation from the responsibility attaching to it through the knowledge of its directors or agents, is manifestly inapplicable to the case at bar, for the Bank manager Brown was throughout acting for the Bank in the transaction of its daily recurring business.

This is further emphasized by the following cases:

A director of the Louisiana State Bank offered the note of a third party for discount, not disclosing a condition assented to when the note was given that it should not be negotiated nor payment exacted until a certain mortgage should be raised. The Bank sued on the note; the defense was interposed of the condition on which the note was given, and the knowledge of the director was sought to be imputed to the Bank. The Court said:

"If the knowledge of these facts had been brought home to the president or cashier, we would unhesitatingly say that the plaintiffs were bound by it, *they being the executive officers of the Bank, upon whom all notices and process may be served.* But directors are not officers of the bank, in the proper sense of the word, *nor have they individually any power or control in the management of its concerns: they act collectively, and at stated times, and have otherwise no more to do with the general*

*"management of the institution than the  
"other stockholders."*

La. State Bank *v.* Senecal, 13 Louisiana, 525.

One Ganson, President of the New York & Erie Bank, and sole manager thereof, caused certain shares of the Bank standing in his name individually to be transferred to his name as executor, and paid for the same by his cheque as executor, the amount of which he had placed to the credit of his individual account. The shares were worthless, and suit was brought by a trustee to recover from the Bank the amount of the deposit so made. Held that the knowledge of Ganson, the President and Manager, was the knowledge of the Bank, and the Bank was held liable for the repayment of the loan.

Holden *v.* N. Y. & Erie Bank, 72 N. Y., 286.

The above case was cited and followed by the New York Supreme Court in

Merchants Nat. B'k *v.* Tracy, 77 Hun, 443 (455),

where the cashier of the Bank entered into a conspiracy with an outsider as the result of which the cashier disposed of some worthless stock in a hydraulic company and discounted for the Bank the defendant's cheques received by the conspirators upon the understanding that they were not to be used until further notice from him. The knowledge and acts and co-operation of the cashier in carrying out the fraudulent scheme were held

to affect the Bank, and a judgment against the Bank was affirmed.

### CONCLUSION.

**The judgments appealed from should be reversed, the steamer and the real estate returned to defendant with an accounting of profits, and the plaintiff remitted to its remedy at law to collect any moneys actually paid by it to or for the benefit of Martinez.**

Respectfully submitted this Eleventh day of March, 1911.

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MAR 3 1911  
JAMES H. McGINLEY

IN THE

**Supreme Court of the United States**

October Term, 1910.

Nos. 79 and 80.

MARIANO MARTINEZ, ADMINISTRATOR OF FRAN-  
CISCO MARTINEZ, DECEASED, APPELLANT,

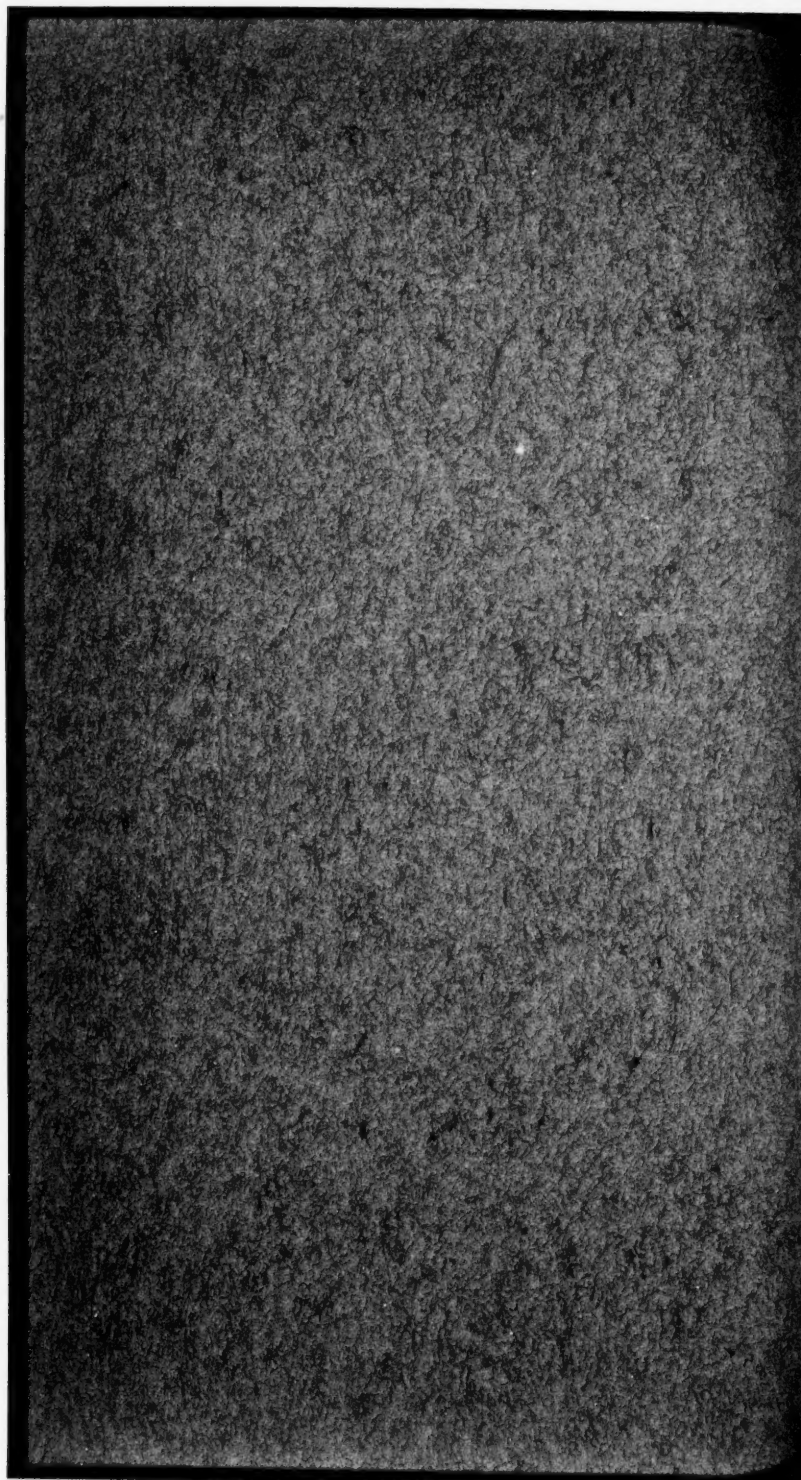
vs.

THE INTERNATIONAL BANKING CORPORATION  
APPELLEE.

APPEALS FROM THE SUPREME COURT OF THE  
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BRIEF FOR APPELLEE.

HENRY B. DAVIS  
*For the Appellee.*



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**BRIEF FOR APPELLEE.**

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I.

**Statement of the Case.**

In addition to what is set forth in the introductory statement and statement of facts in the brief for the appellant, the following details are deemed essential to a proper apprehension of the case, which is, in effect, two cases in one.

In No. 79 (No. 3471 in the court below) the appellee, plaintiff below (hereinafter called plaintiff), filed its complaint against the appellant's intestate, and one Cohn, his guardian, alleging as follows:

On May 2, 1903, the appellant's intestate (hereinafter called Martinez) and his son were the owners in equal shares of two steamers, namely, the "Don Francisco," and the "Germana." On that date plaintiff loaned Martinez Thirty Thousand Pesos, local currency, on condition that the same should be repaid on August 2, 1903, with interest at 8 per cent per annum. As security for such loan Martinez executed an instrument in writing wherein he mortgaged to plaintiff his interest in the two steamers. On June 9, 1903, Martinez and his son divided their ownership of the two steamers, so that Martinez became the sole owner of the "Germana," and the son sole owner of the "Don Francisco," and plaintiff released its mortgage as against the latter and acquired a lien upon the entire steamer "Germana" (Rec., p. 2).

No part of the loan or interest had been repaid; and on November 19, 1903, Cohn was appointed guardian for Martinez; and the plaintiff, therefore, prayed judgment for Thirty Thousand Pesos, local currency, or its equivalent in Philippine currency, with interest at 8 per cent from May 2, 1903, costs and expenses, and for a sale of the steamer "Germana" to pay the claim of the plaintiff (Rec., p. 3).

After the interposition and overruling of demurrers to the complaint (Rec., pp. 6-7), Martinez and his guardian answered, denying all the allegations of the complaint and alleging as follows:

On November 19, 1903, Martinez was duly adjudged a prodigal and incompetent and Cohn was appointed his guardian. Thereafter, on February 3, 1904, in a suit between Martinez and one Sweeney, Judge of the Court of

First Instance of the city of Manila, the Supreme Court of the Philippine Islands made an order requiring the defendant judge to abstain from making an order or judgment of any kind whatsoever, authorizing the sale or other disposition of the property of Martinez, and prohibiting the officials of said court, including the guardian, from selling or otherwise disposing of such property, which order was in full force and effect (Rec., pp. 8-9).

For further separate and distinct answer and cross-complaint the defendants alleged as follows:

Martinez was adjudged a prodigal and incompetent and Cohn appointed his guardian as aforesaid, and further on December 18, 1903, the guardian was empowered to administer the properties of Martinez herein-after mentioned. The steamers "Don Francisco" and "Germana" were conjugal property of Martinez and his wife, the latter of whom died intestate July 31, 1896, leaving Martinez as her sole surviving relative and heir; and on May 2, 1903, Martinez was in possession of the steamers under an order of court of August 5, 1901, naming and appointing Martinez administrator of the steamers, together with other property constituting the conjugal estate of himself and his deceased wife (Rec., p. 9).

On May 2, 1903, Martinez, together with the plaintiff, made the instrument in writing aforesaid under and by virtue of the terms of which the parties thereto unlawfully and illegally stipulated and agreed that the steamers be pledged to the plaintiff as security for the payment of Thirty Thousand Dollars, Mexican currency; and by the said writing the parties unlawfully and illegally stipulated and agreed that the administration of the steamers should be conferred upon one Robles to hold the same at the disposal of the plaintiff and likewise unlawfully and illegally promised and agreed that

Martinez should abstain from administering the same (Rec., p. 10).

Thereafter, on June 15, 1903, a writing was executed between Martinez and the plaintiff, whereby it was agreed to cancel the alleged incumbrance attempted to be imposed upon the steamers as aforesaid; and, thereafter on June 30, 1903, Martinez made and signed with the plaintiff another writing purporting to transfer and assign to the plaintiff all right, title, and interest in and to the "Germana," subject only to the right of redemption in favor of Martinez (Rec., p. 10).

Martinez did not receive, nor did the plaintiff pay consideration of any kind for the alleged transfer of the steamer "Germana;" and the above-mentioned writings were made by Martinez and accepted by the plaintiff for the alleged purpose of securing unto the plaintiff the payment of an alleged personal debt of Martinez to the plaintiff. Martinez is not indebted to the plaintiff any sum or sums whatever; the alleged indebtedness of Martinez consisted of a fictitious account of moneys alleged to have been paid and expended by plaintiff for and on account of Martinez in the acquisition and satisfaction of certain alleged promissory notes; and said notes were null and void, as plaintiff knew, and the moneys paid in acquisition or satisfaction of the same or any of them, if any, were so paid without knowledge or consent of Martinez. During all the times mentioned Martinez had insufficient mental capacity to permit him to administer his business affairs or to comprehend the significance, object, or effect of the writings mentioned. By reason of said lack of mental capacity, Martinez was unduly susceptible to undue influence, artifice, and concealment of the agents and representatives of the plaintiff; and in making and signing the alleged contracts mentioned Martinez did not exercise a deliberate judgment, but was dominated and controlled therein.

the superior capacity and undue influence of the agents and representatives of the plaintiff (Rec., pp. 10-11).

On November 30, 1903, the plaintiff unlawfully and illegally availing itself of the alleged transfer and assignment of the "Germana," unlawfully and illegally claiming to be the owner of the same, took possession thereof and since continued in possession, appropriating to its own use and benefit the income and earnings produced by the said steamer (Rec., p. 11).

The defendants, therefore, prayed judgment that the plaintiff take nothing by its action; that the plaintiff had no right, title, or interest in and to the "Germana;" that the alleged transfer and incumbrances of said steamer in favor of plaintiff be cancelled and annulled; that plaintiff render a full, true, and correct account of all moneys had and received for and on account of the administration and operation of the steamer, and pay the same unto the defendants; and that plaintiff pay defendants the cost of suit incurred by the latter, and have general relief (Rec., pp. 11-12).

After the interposition and overruling of a demurrer to the cross-complaint, and exception to the action of the court in the premises (Rec., pp. 12-13), the plaintiff answered the cross-complaint, admitting the adjudication of Martinez as incompetent, the appointment of his guardian, and the allegations as to the steamers being conjugal property of Martinez and his wife, and the death of the latter, and denying all the other allegations of the cross-complaint, except the allegation that on June 30, 1903, Martinez and the plaintiff executed the writing of that date, which plaintiff admitted, asserting that said writing operated to transfer and assign the right, title and interest of Martinez in and to the "Germana;" and except the allegation that the plaintiff took possession of the steamer, which plaintiff admitted,



alleging such possession to have been lawfully acquired, and admitted that it had received certain moneys derived from the operation of the steamers, alleging that the expenses necessarily incurred in the operation thereof exhausted the income derived from the use thereof (Rec., pp. 14-15).

In No. 80 (No. 3472 in the court below), plaintiff filed its complaint against Martinez and his guardian, alleging as follows:

On June 15, 1903, and prior thereto, Martinez was indebted to the plaintiff in the sum of One Hundred and Ten Thousand Pesos, Mexican currency, then due and unpaid, as admitted by Martinez; in the further sum of Thirteen Thousand Dollars, United States currency, paid by plaintiff for Martinez, on June 2, 1903; and in the further sum of Nine Thousand Pesos, Mexican currency, loaned by the plaintiff to Martinez on November 29, 1902, all with interest at 8 per cent per annum, from and after the respective dates at which such indebtednesses accrued (Rec., pp. 47-8).

On June 15, 1903, Martinez, to secure the payment of said sums of money aggregating One Hundred and Fifty-nine Thousand, Six Hundred and Seven Dollars and Eighty-one Cents, Philippine currency, executed and delivered to the plaintiff his written obligation agreeing to convey to the plaintiff, with the right reserved of repurchase, certain tracts of real estate in the city of Manila, in all fourteen properties, of which the plaintiff was in possession of six and the defendant's guardian in possession of eight. The said obligation was, in fact, and in law, a mortgage given to secure the payment of the items of indebtedness aforesaid, and the plaintiff prayed judgment for the aggregate sum of One Hundred and Fifty-nine Thousand, Six Hundred and Seven Dollars, and Eighty-one Cents, Philippine currency, with interest



at the rate of 8 per cent per annum from the filing of the complaint, and for a sale of the real estate to pay the same (Rec., pp. 48-9).

After the interposition and overruling of a demurrer to the complaint (Rec., pp. 52-3), Martinez and his guardian answered the complaint, setting forth, as above, the adjudication of Martinez as a prodigal and incompetent, the appointment of a guardian for him, and the order in the action between Martinez and Judge Sweeney, as above described (Rec., pp. 54-5).

And for further separate and distinct answer and cross-complaint, the defendants alleged as follows:

Martinez was adjudged a prodigal and incompetent, and a guardian for him appointed as aforesaid. The real property designated in the complaint was conjugal property of Martinez and his wife, as aforesaid, and on February 2, 1903, Martinez was in possession of the property under an order of court as aforesaid (Rec., pp. 55-6).

On February 2, 1903, Martinez, together with the plaintiff, made the instrument in writing aforesaid, under and by virtue of the terms of which the parties thereto unlawfully and illegally stipulated and agreed that the property be hypothecated to the plaintiff as security for the payment of Eighty Thousand Dollars Mexican currency; and by the said writing the parties unlawfully and illegally stipulated and agreed that the administration of the property should be conferred upon the plaintiff, and that Martinez should abstain from administering the same. Thereafter, on June 15, 1903, a writing was executed between Martinez and the plaintiff, whereby it was agreed to cancel the alleged incumbrance attempted to be imposed upon the property as aforesaid, and it was unlawfully and illegally agreed to transfer absolutely to the plaintiff all right, title, and interest in and to the

said properties, subject only to the right of redemption in favor of Martinez (Rec., p. 56-7).

Thereafter, on June 30, 1903, Martinez, together with the plaintiff, made and signed a certain writing purporting to transfer and assign to plaintiff all right, title and interest in and to the property designated in the complaint. Martinez did not receive, nor did the plaintiff pay, any consideration for the alleged agreement of transfer, nor for the alleged transfer of the said properties; and the above-mentioned writings were made and signed by Martinez, and accepted by the plaintiff, for the alleged purpose of securing unto the plaintiff the payment of an alleged personal debt of Martinez to the plaintiff. Martinez is not indebted to the plaintiff in any sum or sums whatever; the alleged indebtedness of Martinez consisted of a fictitious amount of moneys alleged to have been paid and expended by plaintiff for and on account of Martinez in the acquisition and satisfaction of certain alleged promissory notes; and said notes were null and void, as plaintiff knew, and the moneys paid in acquisition or satisfaction of the same, or any of them, were so paid without the knowledge or consent of Martinez (Rec., p. 57).

During all the times mentioned Martinez had insufficient mental capacity to permit him to administer his business affairs or to comprehend the significance, object or effect of the writings mentioned. By reason of the said lack of capacity, Martinez was unduly susceptible to undue influence, artifice, and circumvention of the agents and representatives of the plaintiff, and in making and signing the alleged contracts mentioned, Martinez did not exercise a deliberate judgment, but was dominated and controlled therein by the superior capacity and undue influence of the agents and representatives of the plaintiff (Rec., pp. 57-8).

On November 30, 1903, the plaintiff unlawfully and

illegally availing itself of the alleged transfer and assignment of the property mentioned in the complaint, and lawfully (*sic*) claiming to be the owner thereof, took possession thereof and has since continued in such possession, appropriating to its own use and benefit the income and earnings produced by the property (Rec., p. 58).

The defendants, therefore, prayed judgment as in their cross-complaint in No. 79 (No. 3471).

After the interposition and overruling of a demurrer to the cross-complaint, and exception to the action of the court in the premises (Rec., pp. 58-60), the plaintiff filed to the cross-complaint an answer, *mutatis mutandis*, similar to its answer to the cross-complaint in No. 79 (Rec., pp. 60-2).

In No. 79 the complaint was filed February 25, 1905 (Rec., p. 3); the answer and cross-complaint May 24, 1905 (Rec., p. 12); and the answer to the cross-complaint August 26, 1905 (Rec., p. 15).

In No. 80 the complaint was filed February 25, 1905 (Rec., p. 49); the answer and cross-complaint at a date not appearing, but prior to the demurrer of June 14, 1905 (Rec., p. 59); and the answer to the cross-complaint September 4, 1905 (Rec., p. 62).

In No. 80, on February 27, 1906 (Rec., pp. 62-3), the defendant guardian below moved for leave to amend the answer and counterclaim by substituting an amended answer and cross-complaint, upon the grounds that in the preparation of the defense the said defendant had discovered new evidence materially changing the nature of the defense to be made to plaintiff's complaint; that such amendment was necessary to correct mistaken and inadequate allegations in the former answer and cross-complaint; and that said amendment was necessary in order that the actual merits of the controversy might

be speedily determined. No action appears to have been had upon this motion, though there is in the record (Rec., pp. 63-70) a paper entitled "Amended Answer and Cross-Complaint," dated February 27, 1906, and purporting to have been filed February 28, 1908 (presumably a misprint for 1906, Rec., p. 70); and also another paper entitled "Second Amended Answer and Cross-Complaint" (Rec., pp. 70-78), purporting to have been filed March 15, 1906 (Rec., p. 78). No answer by the plaintiff to either of these two last-mentioned papers appears in the record.

The purport of these two papers, namely, "Amended Answer and Cross-Complaint" and "Second Amended Answer and Cross-Complaint," in addition to the allegations respecting the incapacity of Martinez, is that he was the victim of a conspiracy among one Brown, agent, manager and representative of the plaintiff, one Regidor and one Azaola, agents and attorneys of Brown, acting as such agent and manager, having for its object the cheating and defrauding of Martinez of his property; that, in pursuance of such conspiracy, Brown, Regidor, Azaola, and their agents and employees entered into an agreement and combination with certain gamblers and other persons of the city of Manila, whereby the latter were to engage Martinez in games of chance prohibited by law, and to secure from him promissory notes and other obligations for the sums lost by him in such games, and to secure from the holders thereof other worthless and void promissory notes and obligations of Martinez for gambling debts previous to said conspiracy, the said promissory notes and obligations to be acquired by Brown and his co-conspirators for an insignificant portion of their face value and to be charged against Martinez at their full face value in his accounts with the plaintiff; that, in conformity with such agreement and

combination, said gamblers lured Martinez into playing such games of chance, and did thereby cheat and swindle him out of large sums of money, and secured from him in payment of said sums promissory notes and obligations aggregating, together with the notes and obligations previously executed by him for gambling debts, more than Two Hundred Thousand Pesos, a large portion of which said notes and obligations were acquired by Brown for the plaintiff for an insignificant portion of their face value, and were by him charged upon the books of the plaintiff to the account of Martinez at their full face value; that, pursuant to said conspiracy, Brown opened an account current with the bank of the plaintiff in favor of Martinez in an ostensible amount of Thirty Thousand Pesos, subsequently and for the same ulterior motive increased to Eighty Thousand Pesos, against which account Martinez drew various checks in favor of various persons in payment of gambling debts and other alleged obligations; that when such checks were presented to plaintiff's bank payment was refused, and the holders thereof required by Brown to consult with and secure the approval of Regidor, whereupon such checks were paid by the plaintiff upon condition that the holders pay a discount of from twenty-five to fifty per cent of the face value of such checks, which checks were then charged to the account current of Martinez at their full face value for the purpose of consuming his ostensible credit of Eighty Thousand Pesos; that, pursuant to said conspiracy, Brown and Regidor, taking advantage of the ignorance and mental incapacity of Martinez, and the undue influence which they exercised over him by deceit, misrepresentation, etc., induced and forced Martinez to sign and deliver to them various checks aggregating a large sum in payment for certain of the gambling obligations acquired by them, which checks so signed and delivered

were charged against the account of Martinez in plaintiff's bank, to consume said ostensible credit of Eighty Thousand Pesos; that, on January 23, 1903, Martinez signed and delivered to plaintiff, for the purpose of opening the account current aforesaid, his promissory note for Thirty Thousand Pesos; that thereafter, on February 2, 1903, Martinez, without consideration, was by fraud, etc., induced and forced by Brown, Regidor and Azaola to sign and deliver to the plaintiff another promissory note for Thirty Thousand Pesos, said named persons falsely representing to Martinez that the new note was for the purpose of cancelling the note of January 23, 1903; that, notwithstanding the giving of said second note for Thirty Thousand Pesos, the plaintiff fraudulently retained the earlier note uncanceled, with the intention of collecting the full face value of both notes; that thereafter on February 2, 1903, Brown, Regidor and Azaola, by the same undue influence, induced and forced Martinez to sign and deliver another promissory note for Eighty Thousand Pesos, for the purpose of increasing his credit in account current, including said original so-called credit of Thirty Thousand Pesos to the sum of Eighty Thousand Pesos, without giving Martinez credit for the two notes for Thirty Thousand Pesos aforesaid; that afterwards, on May 3, 1903, by the same fraudulent means, Martinez was induced and forced by Brown, Regidor and Azaola to sign the instrument of sale, with right of repurchase, of the steamers "Don Francisco" and "Germana" to secure the fictitious obligation created by said promissory note for Thirty Thousand Pesos, of February 2, 1903, which instrument forms the basis of plaintiff's claim against Martinez in No. 79; that thereafter, on June 15, 1903, by the illegal and unlawful means aforesaid, Martinez was by Brown, Regidor and Azaola induced and forced to sign the instrument of that date

hereinbefore mentioned; that the obligation of One Hundred and Ten Thousand Pesos mentioned in said last-mentioned instrument is made up of the notes for Thirty Thousand Pesos and Eighty Thousand Pesos dated February 2, 1903; that the separate loan of Thirty Thousand Pesos mentioned in the instrument of June 23, 1903, is the same fictitious obligation represented by the promissory note of February 2, 1903, and said instrument of May 2, 1903; that after triplicating said fictitious obligation of Thirty Thousand Pesos, the plaintiff still retained said three promissory notes of January 23, 1903, and February 2, 1903, uncanceled, until about the month of February, 1904, when the same were turned over and delivered by Brown to Regidor for safekeeping, pending certain investigations into the frauds perpetrated by the conspirators then being conducted by the prosecuting attorney of the city of Manila, it being the intention of the conspirators fraudulently to collect from Martinez the fictitious obligation represented by the said three promissory notes, and the same fictitious obligations represented by the instruments of May 2, and June 15, 1903; that, on February 13, 1903, Martinez signed and delivered to Brown, Regidor and Azaola his check for Nine Thousand Pesos, drawn on his current account with plaintiff's bank in favor of one Legaspi, for the purpose of paying an obligation of that amount due said Legaspi; that said check was charged against said account in plaintiff's bank, and was used to consume said ostensible credit of Eighty Thousand Pesos hereinbefore mentioned; that, notwithstanding such payment and charge, Brown, Regidor and Azaola, by the illegal means heretofore shown, included as a separate item of alleged indebtedness set forth in the instrument of June 15, 1903, "the payment of said attempting to force the said Martinez to pay said obligation twice;" that, on June 21, 1903, by the same illegal means, Martinez was induced and

forced by Brown, Regidor and their employees to sign and deliver to them a check on his current account for the sum of Thirty Thousand Pesos, without any consideration whatever, which check was charged against his current account with the fraudulent intent of fictitiously increasing his alleged indebtedness therein, the excess of which over said ostensible credit of Eighty Thousand Pesos was to be included in the subsequent instrument executed February 12, 1904; that, pursuant to the conspiracy aforesaid, Brown, Regidor, Azaola and their employees and agents obtained complete ascendancy over the mind of Martinez to such an extent as to deprive him of all power of independent action; that, pursuant to said conspiracy, the said named conspirators induced and forced Martinez to sign, among other documents, the instrument of June 15, 1903, the signing of which was without consideration or benefit to Martinez, the alleged indebtedness recited therein as due from Martinez to plaintiff being wholly fraudulent and fictitious; that on February 12, 1904, and subsequent to the adjudication of Martinez as a prodigal and incompetent person, the said conspirators induced and forced Martinez to sign the instrument of that date, purporting to comply with the conditions to be performed on the part of Martinez under the instrument of June 15, 1903; that, after the signing of said instrument of February 12, 1904, the said conspirators fraudulently attempted to falsify the same by antedating it to a time previous to the judicial determination of the prodigality and incompetency of Martinez; that if during the transactions related there were any sums of money actually delivered to Martinez or paid out for his benefit by the conspirators, such sums were so delivered and paid by them for the sole object of retaining and strengthening their influence and ascendancy over Martinez, and to enable them to accomplish their criminal conspiracy to



defraud him of his property; that, notwithstanding the fraud, etc., exercised by Brown and his co-conspirators in securing the instrument of June 15, 1903, the defendants never refused to comply with the provisions of said instrument requiring the transfer to plaintiff of sufficient of the properties therein described which, at the prices therein specified, would extinguish any legal indebtedness which might be found to exist against Martinez in favor of the plaintiff, etc.; that, by reason of the signing and delivery of the said instrument of June 15, 1903, and of other facts pleaded, all the instruments previously signed and delivered to plaintiff, attempting to incumber and transfer the property of Martinez, were cancelled and became of no effect, as did also the instrument of February 12, 1904; and that, on or about November 24, 1903, and subsequent to the judicial determination of the incompetency of Martinez, the plaintiff wrongfully took possession of a large portion of the properties of Martinez, and administered the same and failed to account to the defendants therefor: wherefore, the defendants prayed judgment accordingly, and that the plaintiff render an account of all moneys had and received by it for and on account of the administration of the real property and vessel aforesaid, and pay the same to the defendants (Rec., pp. 63-84).

As already stated, leave of court does not appear to have been given to file either the "Amended Answer and Cross-Complaint" or "Second Amended Answer and Cross-Complaint," and the plaintiff does not appear to have answered either.

And it would have been extraordinary had the court given leave to file either of the papers mentioned, in view of the situation existing at the time of their presentation. The last session at which testimony was

taken for the defendants was held March 13, 1906 (Rec., p. 278), and testimony in rebuttal for the plaintiff was taken March 14, 1906 (Rec., p. 298). Of the three alleged conspirators, Regidor died about the middle of the year 1905, and Azaola one year earlier (Rec., p. 168), and Brown had left Manila sometime in the year 1905 (Rec., p. 157); besides which Lontoc, the writer of the defendant's important Exhibit No. 42 (Rec., p. 381), was also dead (Rec., p. 237); so that it would have been grossly unfair to the plaintiff to have allowed the pleadings to be re-cast "in order to conform to the proofs adduced," and to seek to charge the plaintiff with liability on account of an alleged conspiracy, all the participants in which, and a most important witness respecting which, were proved to be either dead or absent.

In No. 79, and on March 15, 1906 (Rec., p. 15), Martinez and his guardian (one Ilustre, substituted for Cohn), as defendants, by alleged "leave of the court first had and obtained," which nowhere appears in the record, filed, "in order to conform to the proofs adduced," an amended answer and cross-complaint, denying every allegation in plaintiff's complaint, not specifically admitted, and making various allegations, of which the material are as follows:

On or about January 1, 1903, Brown, agent, manager and representative of the plaintiff, Regidor and Azaola, agents and attorneys of the plaintiff employed by Brown, with full knowledge of the mental incapacity and incompetency of Martinez, entered into a conspiracy for the purpose of defrauding him of his property. On May 2, 1903, Martinez signed and delivered to the plaintiff the agreement aforesaid of that date, but was incapacitated and wholly incompetent to administer his affairs or to comprehend the significance, object and effect of said instrument, wherefore it was not binding upon him or

his estate. On February 2, 1903, Martinez, without any consideration, was by fraud and on account of his mental incapacity induced and forced by Brown, Regidor and Azaola, their agents and employees, to give the plaintiff a promissory note for Thirty Thousand Pesos, the same persons falsely representing to Martinez that the note was for the purpose of cancelling another of January 23, 1903, for the same amount, given by Martinez to the plaintiff for the purpose of opening an account current in its bank, and notwithstanding the giving of the second note, the plaintiff fraudulently retained the earlier one uncanceled with the intention of collecting both. Thereafter, on February 2, 1903, Brown, Regidor and Azaola, by fraudulent means, induced and forced Martinez to deliver another promissory note for Eighty Thousand Pesos, for the purpose of increasing his credit to that amount, without giving Martinez credit for either of the two notes for Thirty Thousand Pesos aforesaid. Afterwards, on May 2, 1903, by the same fraudulent means, Martinez was induced and forced to sign the instrument of that date, which is the basis of plaintiff's complaint, to secure the fictitious obligation created by the promissory note of February 2, 1903.

Thereafter, on June 15, 1903, by the illegal and fraudulent means aforesaid, Martinez was by the conspirators induced and forced to sign the instrument of that date, forming the basis of plaintiff's claim in No. 80, the alleged obligation of One Hundred and Ten Thousand Pesos mentioned in which is made up of the notes of Thirty Thousand Pesos and Eighty Thousand Pesos, dated February 2, 1903. The separate loan of Thirty Thousand Pesos mentioned in that instrument is the same fictitious obligation represented by the promissory note of February 2, 1903, and by the instrument of May 2, 1903, the basis of complaint in No. 79. After triplicating said fictitious obligation of Thirty Thousand Pesos aforesaid,

the plaintiff continued to retain the three promissory notes of January 3, 1903, and February 2, 1903, uncanceled, until about the month of February, 1904, when the same were turned over and delivered by Brown to his co-conspirators for safekeeping, pending the investigation aforesaid, it being the intention of the conspirators fraudulently to collect from Martinez the fictitious obligation represented by the three promissory notes, and again to collect the same fictitious obligation represented by the instruments of May 2 and June 15, 1903. After the declaration of prodigality and incompetency of Martinez, Brown and Regidor, in pursuance of the said conspiracy, and for the purpose of simulating a consideration for the execution of the instrument of May 2, 1903, and to avoid detection of the fraud perpetrated thereby, attempted to falsify the books of plaintiff, by causing to appear therein that the consideration of said instrument was made up of various promissory notes given by Martinez in favor of certain fictitious obligations contracted by Martinez in games of chance prohibited by law, in which Martinez was cheated and swindled by certain gamblers in whose favor said notes were executed, and which promissory notes were in pursuance of said conspiracy to cheat and defraud Martinez, acquired by the conspirators at an insignificant portion of their face value, with full knowledge of the circumstances under which they were given, and charged up against Martinez in their full face value in his account with the plaintiff. For the purpose of more clearly showing the conspiracy and the fraud practised by the conspirators, defendants refer to, adopt, and make a part of their answer herein all of the allegations set forth in their answer and cross-complaint in No. 80. By reason of the facts hereinabove set forth, the pretended obligation upon which this suit is based is included in and cancelled by the instrument of June 15, 1903.

the basis of complaint in No. 80, in which the claim for said alleged obligation is merged, or in other words, there is another action pending for the same cause. On or about November 4, 1903, and subsequent to the judicial determination of the incompetency of Martinez, the plaintiff wrongfully took possession of the steamer "Germana," and has used and administered the same, by reason of which the plaintiff is indebted to the defendant guardian in a large amount, the exact sum of which can only be determined by an accounting. Wherefore, the defendants pray that the transfer and incumbrance of the said vessel be cancelled; that the said vessel be delivered to defendants; and that the plaintiff render an account of all moneys received by it for and on account of the administration of the vessel, and pay the same to the defendants.

As above stated, no leave of court to file this Amended Answer and Cross-Complaint appears in the record, and the plaintiff does not appear to have answered the same.

In its opinion and decision the Supreme Court, in the latter case, No. 80, held that the plaintiff was entitled to a judgment in the court below declaring that Martinez was justly indebted to it in the sum of One Hundred and Fifty-nine Thousand Six Hundred and Seven and Eighty-one One-hundredths Pesos, *less such sum as the latter court might decide* should be credited to Martinez for the net receipts from the real estate in the cause mentioned, with interest on the balance from February 25, 1905, at 8 per cent per annum, and ordering that Martinez and Ilustre, his guardian, should execute and deliver to the plaintiff such a contract as was contemplated by that of June 15, 1903, to be substantially in the form of the instrument of February 12, 1904, omitting therefrom, however, the steamer "Germana;"

the judgment to contain a provision that *whatever might be realized from the sale of the "Germana" under the judgment in No. 79, should be considered as a partial payment when realized upon the amount due in No. 80* (Rec., p. 99, fol. 92).

The Court of First Instance, on March 29, 1906 (Rec., pp. 19-20), rendered a judgment dismissing the plaintiff's suit in No. 79, and directing the plaintiff to deliver possession of the steamer "Germana" to Ilustre, guardian of Martinez, on demand; and on the same day (Rec., pp. 85-88) delivered a judgment dismissing the plaintiff's suit in No. 80, and decreeing that Ilustre, guardian of Martinez, recover of the plaintiff Twenty-nine Thousand Two Hundred and Eighty-one and Ninety-two Hundredths Pesos, Philippine currency, and deliver to Ilustre, guardian, the six pieces of real estate aforesaid, mentioned and described in the pleadings as in the possession of the plaintiff.

The Supreme Court of the Philippine Islands, on March 24, 1908, reversed the judgment in No. 79, with directions to the lower court to enter judgment in favor of the plaintiff for the sum of Twenty-eight Thousand Five Hundred and Ninety-nine and Thirteen Hundredths Pesos, and interest at the rate of 8 per cent per annum, from January 1, 1904, with costs, and for the sale of the steamer "Germana," to satisfy the said judgment if not paid (Rec., p. 36). The opinion of the Supreme Court in this case is on pages 26 to 32 of the record, and the judgment of that court was rendered after denial of a motion for a re-hearing (Rec., pp. 33-36).

On the same day, namely, March 24, 1906, the Supreme Court reversed the judgment in No. 80, with directions to the lower court to enter judgment in favor of the plaintiff in accordance with the decision of the Supreme

Court (Rec., p. 103). The opinion of the Supreme Court in this case is on pages 96 to 99 of the record, and the judgment of that court was rendered after denial of a motion for a re-hearing (Rec., pp. 100-3).

After the judgment of the Supreme Court of the Philippine Islands, no further proceedings appear to have been had in the Court of First Instance, and the supposed appeal in each case is to this court from the judgment of the Supreme Court of the Philippine Islands (Rec., pp. 37-39, 43-44; Rec., pp. 104-6, 110).

## II.

### Argument.

1. This court is without jurisdiction in the premises.

The question of this court's jurisdiction to entertain the appeals obviously presents itself in the outset, as is recognized in the brief of counsel for the appellant (pages 18-20); and it is sought to sustain the jurisdiction of the court by appeal to the principle that if the amount of a judgment and of a counter-claim which has been dismissed, when added together, make up the requisite amount, this court has jurisdiction.

The manifest difficulty with this contention is that nowhere in the pleadings is any amount set up by way of counter-claim, such counter-claim as there is being asserted in the most general terms possible. Counsel for the appellant evidently recognizes this and seeks to find the amount of the counter-claim in the testimony, which, of course, will not do. If, for argument's sake, it be conceded that, as contended, the amount of a judgment may be added to the amount of a dismissed counter-claim to make up the necessary jurisdictional amount, resort can not be had to the testimony to find the amount of the counter-claim; that must appear in the

pleadings. Wherefore, if the jurisdiction of this court depends upon the principle invoked, the appeals must be dismissed. This is quite too clear for discussion.

Nor is the situation for the appellant aided by the further contention of counsel that although there was no technical consolidation of the two cases, they constitute in effect but one litigation. On the contrary, this very contention is destructive of the jurisdiction.

As the record clearly shows, there are before the court two separate and distinct cases, separately instituted below, resulting in separate judgments in both the Court of First Instance and the Supreme Court of the Philippines, and brought here by two separate and distinct appeals, each separately allowed and each separately undertaken to be superseded.

But assuming that the two cases do constitute in effect but one litigation, the situation is this: In No. 79, the judgment is for Twenty-eight Thousand Five Hundred and Ninety-nine and Thirteen One-hundredths Pesos, with interest at 8 per cent per annum, from January 1, 1904, and that the steamer "Germana" be sold, if necessary, to pay and satisfy the same (Rec., p. 36). In No. 80, the judgment is that the judgment of the Court of First Instance be reversed and the cause remanded, with directions to the judge to enter judgment in favor of the plaintiff, in accordance with the decision of the higher court (Rec., p. 103); and, as above pointed out, the decision of the latter court is that Martinez was indebted to the plaintiff in the sum of One Hundred and Fifty-nine Thousand Six Hundred and Seven and Eighty-one One-hundredths Pesos less a sum to be decided by the court below as a credit, and less also whatever might be realized from the sale of the "Germana" under the judgment in No. 79 (Rec., p. 99, fol. 92).

Very clearly this is not a final decree, and, therefore, is not appealable. Before the amount payable to the



plaintiff according to the judgment of the Supreme Court of the Philippines can be ascertained and stated, it will be necessary, first, that the "Germana" be sold, and the amount realized from it thereby ascertained; and, secondly, that the Court of First Instance shall ascertain and declare the credit to be allowed Martinez for the net receipts from the real estate in question in No. 80; the proceeds of the "Germana" and the amount to be credited to Martinez being ascertained, and their aggregate deducted from the amount awarded the plaintiff, the amount actually recoverable by the plaintiff, would be the difference, and, too clearly for argument, until such difference be ascertained, this court is without knowledge of the amount actually in controversy between the parties.

It follows, beyond all room for discussion, that the appeals must be dismissed.

2. Assuming the court to have jurisdiction in the premises, the judgments below should be affirmed.

For convenience of treatment the order of the brief for the appellant will be followed.

Counsel for the appellant contend as follows:

(1) The judgments of the court below were contrary to the preponderance of the evidence.

(2) The plaintiff is affected by the alleged frauds of its manager and his knowledge in the premises.

(3) The nominal consideration for the instrument sued on is to a great extent illicit and fictitious.

(4) The contract sued on in No. 79 is not an existing obligation.

(5) The judgment in No. 80 is not within the issues or justified by the facts pleaded or proved; and

(6) The plaintiff violated orders of court and is entitled to no consideration.

(1) Under the first contention it is asserted that:

(a) At the time of the transactions involved, Martinez was incompetent to make a binding contract;

(b) The instruments sued on were induced by fraud, threats or undue influence.

(a) It is difficult seriously to consider the contention as to the incompetency of Martinez to transact business.

No reliance seems to be placed by counsel upon the adjudication of prodigality, and for good reason. The Civil Code in force in the Philippines (Articles 221 to 227), dealing with prodigals, clearly recognizes that class of unfortunates as being very different from the class of incompetents, in the sense of those who are lacking in mental capacity. By article 224 it is provided that "the declaration of prodigality does not deprive the prodigal of the maternal and paternal authority," a provision wholly inconsistent with the idea that prodigals and incompetents are to be treated as in the same class. And article 1263, enumerating persons who "can not give consent," does not mention prodigals.

And another good reason for not relying upon the adjudication of prodigality is that article 226 provides that "the acts of a prodigal, prior to the request for interdiction, can not be contested on account of prodigality."

Judiciously, therefore, it is sought to make out a case of mental incompetency on the part of Martinez, wholly independent of the adjudication of prodigality.

But the most casual reading of the testimony, and the briefest consideration of it, will show the futility of this effort. The statement of the Court of First Instance that Martinez was "imbecile," "demented," or "not mentally capable of transacting business" is refuted by the testimony at every point, and can not be characterized otherwise than as extravagant and unwarranted.

It would serve no good purpose, and is wholly unnecessary, to review at any length the voluminous, disjointed and for much the greater part wholly incompetent and irrelevant testimony with which the record is burdened, with a view to dealing with the scattered and trivial statements of witnesses having any, the slightest, bearing upon this question of incompetency; it will suffice to say that a careful reading of the opinion of the Supreme Court, by Willard, J. (Rec., pp. 27-8, *fols.* 46-48), will convince anyone who has the patience to go through the record that what is there said by the court is abundantly and literally justified, and expresses the only possible intelligent judgment upon the point under consideration.

(b) Nor is there any greater force in the contention that the instruments sued on were induced by fraud, threats, or undue influence.

In the opinion already cited (Rec., p. 28, *fol.* 49) it is significantly pointed out that this matter was not mentioned in the brief for the appellee below (appellant here), and the court pointedly and justly said that "this defense finds no support in the evidence." Again it is unnecessary to review the testimony at length; the most that it could be claimed to show in any view possible to be taken of it, even from the appellant's viewpoint, is not that Martinez was defrauded or unduly influenced in executing the instruments sued on, but that his frailty in respect of gambling made him a prey to sharpers, one of whom may or may not have been the plaintiff's employee Brown, and that these sharpers swindled him in respect of checks which he gave in payment of his gambling debts. Again the opinion of the Supreme Court effectively deals with this contention, and announces the only conclusion to be drawn from a fair, not to say intelligent consideration of the testimony.

The citations from the record set forth in the brief for the appellant tend to show this and this only; and surely it is not to be argued that negotiations and communications between those engaged in fleecing Martinez in respect of the cashing of his checks, can have any bearing upon the question of the validity of the instruments sued on, seeing that it is pretended by no one that any part of the moneys subtracted by anybody from the proceeds of the checks found its way to the plaintiff, or entered into the consideration upon which the instrument sued on rested. This makes wholly unimportant and puts altogether out of consideration the question whether the bank's agent ever received any money by reason of any of the transactions between the alleged principal conspirator Regidor and Martinez, although the Supreme Court below distinctly found (Rec., pp. 30-31), that none of the evidence indicated in the slightest manner that the plaintiff's agent ever received any money by reason of any of the said transactions.

(2) The contention that the plaintiff is affected by the alleged fraud of its manager and his knowledge in the premises, depends, in its last analysis, upon the proposition that as it was only through the manager's official position and power that the frauds practiced on Martinez were possible, the plaintiff is, therefore, chargeable therewith.

But the only alleged frauds upon the possible participation in which of the plaintiff's manager any of the testimony even remotely bears, are the alleged frauds in "shaving" the checks of Martinez, given for his gambling debts; and the statement in the Brief for the Appellant (page 36), that, as agent of the plaintiff, its manager intimidated Martinez into executing the various obligations to the plaintiff, is without support in the record.

Although on the examination of various witnesses for the plaintiff, when alleged statements of Martinez made after the adjudication of his prodigality were about to be given, the court refused to hear them upon the ground that, so long as the adjudication remained unvacated, the prodigality and the assumed incompetency incident thereto continued (e. g., Rec., pp. 192-3, 207-8), Martinez was called as a witness for the defense; and when under examination said, in answer to the pointed question who it was that threatened him when he refused to sign various documents, "Mr. Regidor and Mr. Brown" (Rec., pp. 82-3). But there is no hint in his testimony as to what those documents were; he admitted that at the time he signed the documents of which he was speaking they were read to him, and their contents explained (Rec., p. 283, fol. 292); that he never spoke to anybody but his now dead wife about the alleged threats (Rec., pp. 287-8); and that when he was under examination before the court in the matter of his prodigality, he said nothing about the alleged threats (Rec., p. 288). And throughout his testimony in that proceeding, which is incorporated in the record (pages 315 et seq.), he repeatedly speaks of his indebtedness to the plaintiff and his desire to have it paid.

The subordinate contention that the plaintiff's manager had actual knowledge of the mental incapacity of Martinez and of the frauds and machinations practised upon him may be dismissed with a remark: there was no mental incapacity of which the manager could have knowledge; and, as already stated, the alleged frauds and machinations were in respect of matter wholly outside of the instruments sued on.

(3) The unsubstantial character of the contention that the nominal consideration for the instruments sued on is to a great extent illicit and fictitious is recognized by

the statement of counsel for the appellant (Brief, page 39), "that it is difficult at the present time to unravel the tangle and ascertain which of the notes involved are separate and original frauds and which are duplicates and repetitions."

It would serve no useful purpose to undertake to accompany counsel in the effort to find these alleged duplications and repetitions in the record: it may suffice to say that the plaintiff's employees who testified, and the plaintiff's records given in evidence, establish beyond room for doubt that, so far as the plaintiff is concerned, the indebtednesses for which it sued were genuine and legitimate, no matter through what experiences Martinez may have gone in bringing himself to the incurring of those indebtednesses.

(4) The suggestion that the contract sued on in No. 79 is not an existing obligation, because it was extinguished by the instrument of June 15, 1903, grows out of a misapprehension of the meaning of the portion of that instrument referred to (Rec., p. 425), the most casual reading of which will show that it was the steamer "Don Francisco," and not the steamer "Germana," to which the supposed "extinction" relates.

(5) Similarly, the contention that the judgment in No. 80 is not within the issues, or justified by the facts pleaded or proved, rests upon a patent misapprehension.

That the instrument of June 15, 1903, mentioned in the complaint in that cause, is alleged in the complaint to be in fact and in law a mortgage, coupled with the further allegation that none of the conditions of the said instrument had been fulfilled by Martinez, and followed by the prayer that in case of the failure of Martinez to pay the plaintiff the sum named in the cause, the real estate therein described might be sold to pay the amount due the plaintiff, amounts to nothing more than an allegation that Martinez had agreed to convey the real estate

as security for his indebtedness, under conditions equivalent to those of a mortgage, and that, he not having done so, his agreement so to convey should be treated as in effect the contemplated mortgage and dealt with accordingly.

The Supreme Court below, however, as it properly might do under the prayer for general relief, decreed compliance with the instrument of June 15, 1903. And its direction for the omission of the steamer "Germana" from the judgment which it directed the Court of First Instance to render, is explicable by the simple fact that the court had already dealt with that property by its judgment in No. 79.

(6) The suggestion that the plaintiff violated certain orders of the court, and is, therefore, entitled to no consideration, has reference to the plaintiff's taking possession of certain property of Martinez three weeks after the decree of November 19, 1903 (Rec., pp. 373-375), by which it is said in the Brief for the Appellant (pp. 48-9), "all persons were forbidden . . . from interfering in any way with Martinez's property."

As by reference to that decree clearly appears (Rec., p. 375, *fol.* 68), it prohibited all agents and representatives of Martinez, except his guardian, "from in any manner interfering in the administration, management or control" of his estate, a wholly different thing from prohibiting a potential lienor from making his lien actual.

But even if it were true that the plaintiff, whether mistakenly or obstinately, disregarded that decree or any provision thereof, that is no reason for fining the plaintiff the amount of its justly adjudicated claim in the premises.

Respectfully submitted.

HENRY E. DAVIS,  
*For the Appellee.*

MARTINEZ *v.* INTERNATIONAL BANKING  
CORPORATION.

SAME *v.* SAME.

APPEALS FROM THE SUPREME COURT OF THE PHILIPPINE  
ISLANDS.

Nos. 79, 80. Argued March 3, 6, 1911.—Decided April 3, 1911.

The value of the matter in dispute in this court is the test of jurisdiction. *Hilton v. Dickinson*, 108 U. S. 165.

Where the only question is the amount of indebtedness, which the security was sold to satisfy, that is the measure of the amount in controversy, and the counterclaim for return of the property sold cannot be added to the amount of the debt to determine the amount in controversy and give this court jurisdiction. *Harten v. Löffler*, 212 U. S. 397, distinguished.

The mere fact that suits are tried together for convenience does not amount to a consolidation, and where the understanding of the trial judge was that there was no consolidation this court will not unite the actions so that the aggregate amount will give jurisdiction.

A judgment of the intermediate appellate court reversing and remanding with instructions to enter judgment for plaintiff in accordance with its decision without fixing a definite amount is not such a final judgment as will give jurisdiction to this court.

THE facts are stated in the opinion.



Mr. Howard Thayer Kingsbury and Mr. Frederic R. Coudert, with whom Mr. Paul Fuller was on the brief, for appellant:

This court has jurisdiction of both appeals, with power to review the facts as well as the law.

Where the court below has rendered a judgment in favor of plaintiff for less than the jurisdictional amount and has also dismissed a counterclaim interposed by the defendant, who seeks to review the judgment, the amount of the judgment, and the amount sued for in the counterclaim, are in dispute and if the two together make up the requisite amount, this court has jurisdiction. See *Harten v. Löffler*, 212 U. S. 397; *Buckstaff v. Russell*, 151 U. S. 626; *Block v. Darling*, 140 U. S. 234; *Lovell v. Cragin*, 136 U. S. 130; *Dushane v. Benedict*, 120 U. S. 630. So in case of cross appeals, *Walsh v. Mayer*, 111 U. S. 31.

The decree in No. 79 is substantially one of foreclosure and sale. Such a decree has been expressly held by this court to be final. *Whiting v. United States Bank*, 13 Pet. 6, 15. Nothing remained for the court below to do except to carry out the judgment. The direction to sell the Germana, if the judgment was not otherwise paid, was absolute, and the sale would not even require confirmation by the court.

In No. 80 the judgment appealed from settled the whole law of the case and fixed the rights of the parties, leaving nothing for the court below to do except of a ministerial character. The dispositive portion of the judgment was an absolute direction for the specific performance of the agreement sued on, by the execution of an instrument in the form specified by the court. *Thomson v. Dean*, 7 Wall. 342; *Forgay v. Conrad*, 6 How. 201; *French v. Shoemaker*, 12 Wall. 86, 98; *Hill v. Chicago & Evanston R. R. Co.*, 140 U. S. 52; see 32 Stat. 695, quoted in *De la Rama v. De la Rama*, 201 U. S. 305.

*Mr. Henry E. Davis* for appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

These are two suits commenced in the Court of First Instance of the city of Manila on the same day, February 25, 1905, and numbered in that court as cases Nos. 3363 and 3365, respectively. In each suit the International Banking Corporation was plaintiff and Francisco Martinez and another person as the guardian of Martinez were defendants. After the present appeals were taken Martinez died and his administrator has been substituted in his stead.

We shall separately summarize the proceedings below in the two cases to the extent it is necessary to do so to understand the proper disposition to be made of the appeals.

Case No. 79 was a suit of an equitable nature brought by the bank against Martinez to foreclose a mortgage upon the steamer *Germana*, sell the steamer, and collect an alleged debt of 30,000 pesos, claimed to be secured thereby. By the answer and cross bill it was asserted that at the time of executing the mortgage Martinez was mentally incapacitated, and hence legally incompetent; that the whole transaction was void for fraud, duress and conspiracy; that the alleged indebtedness was a part of the subject-matter of the instrument sued on in the other case, the effect of which instrument was to supersede the mortgage sued on in this, and that plaintiff had wrongfully taken and held possession of the steamer and refused to account for its profits. As affirmative relief the setting aside of the whole transaction was demanded, as also the return of the steamer and an accounting of its profits.

The Court of First Instance in substance sustained these defenses, dismissed the plaintiff's suit, and directed a return of the steamer.

It was recited in the judgment: "This case was tried together with case No. 3365, it being agreed that the evidence taken on the trial pertinent to either or both cases should be considered by the court in the respective cases." On appeal the Supreme Court of the Philippine Islands reversed this judgment, held that the transaction was valid, and entered the following judgment:

"It is ordered that the judgment appealed from the Court of First Instance of the city of Manila, dated March 29, 1906, be, and the same is hereby reversed, and the record remanded to the court from which it came, with directions to that court to enter judgment in favor of the plaintiff, and against the defendants, Francisco Martinez and his guardian, Vicente Ilustre, for the sum of P 28,599.13, and interest at the rate of eight per cent per annum from the first day of January, 1904, with costs, and that the steamship 'Germana,' if said judgment is not paid, be sold in accordance with law to pay and satisfy the amount of said judgment. No costs will be allowed to either party in this court."

Case No. 80.—This case was brought to recover a judgment for 159,607.81 pesos with interest, and in default of payment for the foreclosure of an instrument alleged to be a mortgage, the sale of certain real estate described in the mortgage, execution in the event of a deficiency, and for general relief. By answer and cross bill the same general defenses were set up as in the other suit. It was further averred that the alleged considerations for the instrument sued on was "padded and fictitious," contained duplications of the same item, and included the item of 30,000 pesos which was the subject of the other case; also that the instrument sued on was not in law a mortgage, but was an agreement for the transfer of property with right of repurchase (*pacto de retro*), and that the defendant had never refused to perform such contract, but that the plaintiff had failed to perform its own obligations there-

under; also that the plaintiff had wrongfully taken possession of the property in question and received its rents and profits. The defendant demanded that the entire transaction be set aside; that plaintiff's suit be dismissed, and that plaintiff account for the rents and profits it had received.

The Court of First Instance found against the plaintiff and rendered judgment in favor of the defendant guardian for the gross amount of the rents adjudged to have been unlawfully collected by the plaintiff. The case was appealed to the Supreme Court of the Philippine Islands, and was there docketed as case No. 3472. The appellate court held "that the evidence is not sufficient to establish any of the defenses or counterclaims," and "that the defendant, Martinez, at the time the action was commenced, was indebted to the plaintiff in at least the sum of P 159,607.81 was fully established by the evidence." The court, however, decided that the instrument claimed to be a mortgage was not such, but was "a promise to sell real estate upon certain terms, and contemplates a subsequent contract of sale which should contain the terms stated in this document," and that sufficient facts were stated in the complaint "to constitute a good cause of action for the specific performance of the contract." After referring to the fact that plaintiff had been in possession of certain of the real property described in the complaint and collected rentals therefrom, the court concluded its opinion as follows:

"The net amount collected should be applied in reduction of the sum of 159,607.81 pesos, which according to the evidence the defendants owe to the plaintiff. When the case is remanded, the defendants should have an opportunity to question the expenses claimed to have been met by the plaintiff in connection with its possession of these buildings, which it has deducted from the gross amount received.

"After a consideration of the whole case, we hold that the plaintiff is entitled to a judgment in the court below, with costs, declaring that Francisco Martinez is justly indebted to it in the sum of 159,607.81 pesos, less such sum as that court may decide should be credited to Martinez for the net receipts from the real estate in question in this case, with interest on the balance from February 25th, 1905, at eight per cent per annum; and ordering that Francisco Martinez and Vicente Ilustre, as guardian of Francisco Martinez, execute and deliver to the plaintiff, within a time to be fixed by the court, such a contract as is contemplated by the contract of June 15th, 1903, which should be substantially in the form of the instrument above referred to of date of February 12th, 1904, omitting therefrom, however, the steamer 'Germana.' The judgment should contain a provision that whatever may be realized from the sale of the 'Germana' under the judgment in case No. 3471 shall be considered as a partial payment when realized upon the amount due in this action.

"The judgment of the court below is reversed, and the case is remanded with instructions to that court to enter judgment for the plaintiff in accordance with the views hereinbefore expressed. No costs will be allowed to either party in this court."

The following judgment was subsequently entered:

"It is hereby ordered that the judgment of the Court of First Instance of the city of Manila, appealed from and dated March 29, 1906, be reversed and the case remanded to the court from which it came with directions to the judge to enter judgment in favor of the plaintiff in accordance with the decision of this court, without special provision as to the costs of this appeal."

The present separate appeals from the aforementioned judgments of the Supreme Court of the Philippine Islands were then taken. The petition for the allowance of the appeal in the first case (No. 79 here; No. 3471 in the Su-

preme Court of the Philippine Islands) expressly recited that the amount in controversy therein "is 30,000 pesos, equivalent to \$15,000 U. S. currency." It was, however, asserted that the cause was "an incident and part of the same transaction and controversy involved in cause No. 3472," and that the two cases "were . . . consolidated and tried together in the Court of First Instance." The appeal was allowed by one of the associate justices of the Supreme Court of the Philippine Islands. In doing so he declared "that . . . there was not a strict consolidation of the two cases . . . between the same parties by virtue of an express order of the court and in accordance with the procedural law, and . . . the amount in litigation in the first of the said cases does not exceed \$15,000 United States currency." However, substantially upon the ground of the "connection and intimate relation" between the cases "the doubt produced by reasons advanced as to whether or not the appeal interposed in case No. 3471 is admissible, notwithstanding the fact that the amount involved does not reach the sum of \$25,000 United States currency" was left to be determined by this court. The appeal in the second case was allowed by the same justice, it being recited that it appeared "that the amount involved exceeds \$25,000 United States currency."

In the argument at bar counsel for appellee moved that the two appeals be dismissed for want of jurisdiction in this court. We, therefore, first proceed to consider this question.

The claim of want of jurisdiction in No. 79 is based upon the contention that the questions presented in the case could only be reviewed provided the value of the matter in controversy exceeds \$25,000 — (§ 10, ch. 1369, act July 1, 1902, 32 Stat. 691, 695) — and that the value is less than that sum. We are of opinion that the objection is well taken. True, it is contended for the appellant that the

amount awarded to the plaintiff by the Supreme Court of the Philippine Islands was 28,599.13 pesos and interest, and that the defendants' counter-claim for the vessel and the receipts from the use of the same amounted to 38,000.00 pesos, and that the two amounts should be aggregated in determining the value of the matter in controversy. The case of *Harten v. Löffler*, 212 U. S. 397, is cited as authority. But conceding that cases may arise where the amount of a judgment in favor of a plaintiff may be combined with the sum demanded in a dismissed counter-claim of a defendant to determine whether the jurisdictional value exists, manifestly this is not a case for the application of the doctrine. The value of the matter in dispute in this court is the test of our jurisdiction. *Hilton v. Dickinson*, 108 U. S. 165. What, therefore, is that matter is the question to be considered. Plainly, it is whether Martinez was indebted to the bank, as adjudged below, since if the indebtedness existed the amount thereof is the extent of the loss which the estate of Martinez can sustain, because, irrespective of what might be the proceeds of sale of the vessel or of other property of the estate of Martinez, if realized upon, no more of such proceeds could be taken than would be sufficient to satisfy the judgment. The jurisdictional value, however, plainly would not exist even if the vessel and its profits were treated as the matter in dispute, since, as we have seen, the appellant only asserts that the value of the vessel and the profits aggregated 38,000 pesos, less than \$25,000. See, in this connection, the case of *Peyton v. Robertson*, 9 Wheat. 527, approvingly cited in the *Hilton Case*, *supra*.

We are unable to assent to the view that the case should be treated as having been consolidated with No. 80; in other words, that the two cases are in reality but one. The suits were separately commenced, and although tried together this was done for convenience and the cases were tried not upon the theory that they were consolidated, but

as being separate and distinct suits. Thus, it is recited in the record that at the commencement of the trial, on February 28, 1906, it was stipulated "that these two cases, Nos. 3363 and 3365, may be tried together and that the defendants may amend their answer in 3365 as soon as they have opportunity, as of this date." Again, in the course of the examination of one Taylor, a witness for the plaintiff, counsel for the defendant objected to a question, whereupon the following colloquy ensued.

"Mr. Odlin. We are trying both cases together, but I can take him off the stand and put him back.

"Mr. Gibbs. If this question is asked with reference to 3365, I desire to make the further objection to the introduction of the evidence, for the reason that the complaint in that case does not state a cause of action."

The understanding of the trial judge that there was in fact no consolidation of the two cases is evidenced by the judgment which was entered by him, and that the Supreme Court of the Philippine Islands entertained the same view is shown by the judgment which it entered.

*As to No. 80.* The objection is that the judgment of the Supreme Court of the Philippine Islands is not a final one. This objection must prevail for the reason that although involving a decision upon the merits of the case, the judgment of the Supreme Court contemplates and requires further proceedings in the lower court not inconsistent with its opinion. *Clark v. Roller*, 199 U. S. 541. The Supreme Court of the Philippine Islands did not in its judgment, as was done in the judgment entered in case No. 79, fix and determine the precise amount for which the trial court should enter judgment. On the contrary, its direction was that judgment be entered "in favor of the plaintiff in accordance with the decision of this court." On referring to the opinion it is seen that the Supreme Court deemed that the plaintiff was entitled to a judicial determination of the amount of the indebtedness of Mar-



tinez to it. It is patent that the court found that the exact amount could not be determined without further proceedings, since it in effect left the case open in the trial court for a hearing upon the question of the amount of expenses incurred by the bank in and about the real property of Martinez of which it had taken possession. Thus, in the opinion of the appellate court, it was said:

"The net amount collected should be applied in reduction of the sum of 159,607.81 pesos, which according to the evidence the defendants owe to the plaintiff. When the case is remanded the defendants should have an opportunity to question the expenses claimed to have been met by the plaintiff in connection with its possession of these buildings, which it has deducted from the gross amount received."

It follows that although the appellate court fixed the rights and liabilities of the parties, it in effect referred a question in the case to the subordinate court for further judicial action; hence its judgment was not final for the purpose of an appeal or writ of error. *Drake v. Kochersperger*, 170 U. S. 303; *Clark v. Kansas City*, 172 U. S. 334. Until, therefore, the trial court by its judgment ascertains and fixes the actual indebtedness of the plaintiff and complies with the other directions contained in the mandate it cannot be said that a final decree has been entered in the cause. Indeed, on the very face of the decree of the Supreme Court of the Philippine Islands it is manifest that this court, if it took jurisdiction, could not finally dispose of the case in the event it affirmed the judgment below, since all it could do would be to consider the matters determined by the Supreme Court and do as that court did, remand the cause for further proceedings in order that the rights of the parties might be thereafter finally passed upon. But the foundation upon which rests the doctrine which, as a general rule, limits the appellate jurisdiction of this court to final judgments is that

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cases should not be brought here by piecemeal through the medium of successive appeals.

The motion to dismiss the appeal in each of the cases must be granted.

*Dismissed for want of jurisdiction.*



PEREZ Y FERNANDEZ *v.* FERNANDEZ Y PEREZ.